

# ***NORTH CAROLINA REGISTER***

**VOLUME 36 • ISSUE 20 • Pages 1603 – 1677**

**April 18, 2022**

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### **PUBLISHED BY**

*The Office of Administrative Hearings*

*Rules Division*

*1711 New Hope Church Road*

*Raleigh, NC 27609*

*Telephone 984-236-1850*

*Fax 984-236-1947*

*Donald R. van der Vaart, Director*

*Ashley B. Snyder, Codifier of Rules*

*Dana McGhee, Publications Coordinator*

*Cathy Matthews-Thayer, Editorial Assistant*

## **Contact List for Rulemaking Questions or Concerns**

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address but are not inclusive.

### **Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.**

Office of Administrative Hearings

Rules Division

1711 New Hope Church Road

Raleigh, North Carolina 27609

984-236-1850

984-236-1947 FAX

contact: Ashley B. Snyder, Codifier of Rules

ashley.snyder@oah.nc.gov

984-236-1941

Dana McGhee, Publications Coordinator

dana.mcghee@oah.nc.gov

984-236-1937

Cathy Matthews-Thayer, Editorial Assistant

cathy.thayer@oah.nc.gov

984-236-1901

### **Rule Review and Legal Issues**

Rules Review Commission

1711 New Hope Church Road

Raleigh, North Carolina 27609

984-236-1850

984-236-1947 FAX

contact: Brian Liebman, Commission Counsel

brian.liebman@oah.nc.gov

984-236-1948

Lawrence Duke, Commission Counsel

lawrence.duke@oah.nc.gov

984-236-1938

William W. Peaslee, Commission Counsel

bill.peaslee@oah.nc.gov

984-236-1939

Alexander Burgos, Paralegal

alexander.burgos@oah.nc.gov

984-236-1940

Julie Brincefield, Administrative Assistant

julie.brincefield@oah.nc.gov

984-236-1935

### **Fiscal Notes & Economic Analysis**

Office of State Budget and Management

116 West Jones Street

Raleigh, North Carolina 27603-8005

Contact: Carrie Hollis, Economic Analyst

osbmruleanalysis@osbm.nc.gov

984-236-0689

NC Association of County Commissioners

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Amy Bason

919-715-2893

amy.bason@ncacc.org

NC League of Municipalities

424 Fayetteville Street, Suite 1900

Raleigh, North Carolina 27601

contact: Monica Jackson

919-715-2925

mjackson@nclm.org

### **Legislative Process Concerning Rulemaking**

545 Legislative Office Building

300 North Salisbury Street

Raleigh, North Carolina 27611

919-733-2578

919-715-5460 FAX

Jason Moran-Bates, Staff Attorney

Chris Saunders, Staff Attorney

Aaron McGlothlin, Staff Attorney

**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2022 – December 2022

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 <sup>th</sup> day from publication in the Register
36:13	01/03/22	12/08/21	01/18/22	03/04/22	03/21/22	04/21/2022	05/01/22	09/30/22
36:14	01/18/22	12/22/21	02/02/22	03/21/22	04/20/22	05/19/2022	06/01/22	10/15/22
36:15	02/01/22	01/10/22	02/16/22	04/04/22	04/20/22	05/19/2022	06/01/22	10/29/22
36:16	02/15/22	01/25/22	03/02/22	04/18/22	04/20/22	05/19/2022	06/01/22	11/12/22
36:17	03/01/22	02/08/22	03/16/22	05/02/22	05/20/22	06/16/2022	07/01/22	11/26/22
36:18	03/15/22	02/22/22	03/30/22	05/16/22	05/20/22	06/16/2022	07/01/22	12/10/22
36:19	04/01/22	03/11/22	04/16/22	05/31/22	06/20/22	07/21/2022	08/01/22	12/27/22
36:20	04/18/22	03/25/22	05/03/22	06/17/22	06/20/22	07/21/2022	08/01/22	01/13/23
36:21	05/02/22	04/08/22	05/17/22	07/01/22	07/20/22	08/18/2022	09/01/22	01/27/23
36:22	05/16/22	04/25/22	05/31/22	07/15/22	07/20/22	08/18/2022	09/01/22	02/10/23
36:23	06/01/22	05/10/22	06/16/22	08/01/22	08/22/22	09/15/2022	10/01/22	02/26/23
36:24	06/15/22	05/24/22	06/30/22	08/15/22	08/22/22	09/15/2022	10/01/22	03/12/23
37:01	07/01/22	06/10/22	07/16/22	08/30/22	09/20/22	10/20/2022	11/01/22	03/28/23
37:02	07/15/22	06/23/22	07/30/22	09/13/22	09/20/22	10/20/2022	11/01/22	04/11/23
37:03	08/01/22	07/11/22	08/16/22	09/30/22	10/20/22	11/17/2022	12/01/22	04/28/23
37:04	08/15/22	07/25/22	08/30/22	10/14/22	10/20/22	11/17/2022	12/01/22	05/12/23
37:05	09/01/22	08/11/22	09/16/22	10/31/22	11/21/22	12/15/2022	01/01/23	05/29/23
37:06	09/15/22	08/24/22	09/30/22	11/14/22	11/21/22	12/15/2022	01/01/23	06/12/23
37:07	10/03/22	09/12/22	10/18/22	12/02/22	12/20/22	01/19/2023	02/01/23	06/30/23
37:08	10/17/22	09/26/22	11/01/22	12/16/22	12/20/22	01/19/2023	02/01/23	07/14/23
37:09	11/01/22	10/11/22	11/16/22	01/03/23	01/20/23	02/16/2023	03/01/23	07/29/23
37:10	11/15/22	10/24/22	11/30/22	01/17/23	01/20/23	02/16/2023	03/01/23	08/12/23
37:11	12/01/22	11/07/22	12/16/22	01/30/23	02/20/23	03/16/2023	04/01/23	08/28/23
37:12	12/15/22	11/22/22	12/30/22	02/13/23	02/20/23	03/16/2023	04/01/23	09/11/23

This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

## **EXPLANATION OF THE PUBLICATION SCHEDULE**

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

### **GENERAL**

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

**COMPUTING TIME:** In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

### **FILING DEADLINES**

**ISSUE DATE:** The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

**LAST DAY FOR FILING:** The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

### **NOTICE OF TEXT**

**EARLIEST DATE FOR PUBLIC HEARING:** The hearing date shall be at least 15 days after the date a notice of the hearing is published.

**END OF REQUIRED COMMENT PERIOD**  
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

**DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:** The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.





# State of North Carolina

**ROY COOPER**  
GOVERNOR

March 16, 2022

EXECUTIVE ORDER NO. 254

## ESTABLISHMENT OF THE NORTH CAROLINA JOINT CYBERSECURITY TASK FORCE

**WHEREAS**, cybersecurity threats are increasing in volume and sophistication, requiring a need to understand the threat landscape to prevent attacks and to protect the State's information technology networks and critical infrastructure from acts of terrorism and criminal, organized-crime or gang activity; and

**WHEREAS**, geopolitical events like Russia's recent unlawful invasion of Ukraine can lead to an increase in cybersecurity threats and attacks; and

**WHEREAS**, cybersecurity breaches have the potential to impact the delivery of essential public services and private services to the people of North Carolina, threaten the confidentiality, integrity and availability of state data, and can cause loss of reputation and significant economic disruption and harm; and

**WHEREAS**, the State must identify, protect against, and respond to cyberattacks aimed at causing privacy violations, identity theft, and disruption of business continuity; and

**WHEREAS**, state agencies, local governments, tribal governments, the private sector, academic institutions, federal agencies and other state entities must mitigate cyber risks through information sharing, monitoring, forensics and incident response to protect public security and individuals' data; and

**WHEREAS**, in order to prepare for and combat against these public security threats, the North Carolina Department of Information Technology/Enterprise Security and Risk Management Office, the North Carolina Division of Emergency Management, the North Carolina National Guard, and the North Carolina Local Government Information Systems Association Cybersecurity Strike Team have created a Joint Cybersecurity Task Force ("Task Force"); and

**WHEREAS**, the Task Force provides crucial services to North Carolina in preventing and responding to cybersecurity breaches and attacks, including increased cybersecurity threats arising from Russia's recent unlawful invasion of Ukraine; and

**WHEREAS**, the cybersecurity of North Carolina's critical infrastructure will be enhanced through greater interaction and communication between the Task Force and public and private stakeholders to identify and respond to cybersecurity threats; and

**WHEREAS**, there are sixteen Critical Infrastructure Sectors as defined by Presidential Policy Directive ("PPD-21") whose assets, systems, and networks, whether physical or virtual, are vital to the State of North Carolina and their incapacitation or destruction would have a debilitating effect on security, economic security, public health or safety, or any combination thereof; and

**WHEREAS**, there are a wide variety of Critical Infrastructure Sector facilities in North Carolina, some of which are open to the public or contain highly sensitive business functions, that

include cyber elements such as, general-use office buildings, military installations, courthouses, state laboratories, and others that may contain critical equipment, systems, networks, and functions essential to the State of North Carolina; and

**WHEREAS**, Critical Infrastructure and Key Resources (“CIKR”) across the United States are under constant threat of malicious activity by individual threat actors, such as terrorists, cyber-criminal gangs, and other malicious actors; and

**WHEREAS**, the “Whole-of-State” approach to cybersecurity adopted by the Task Force is a proven and effective strategy that prioritizes the protection of CIKR; and

**WHEREAS**, to best mitigate against risk, North Carolina needs to have an accurate understanding of CIKR entities across the state and the status of their cybersecurity programs; and

**WHEREAS**, there is a need for CIKR entities to coordinate and report significant cybersecurity incidents to remediate and address root causes of a significant cybersecurity incident during the recovery from an event; and

Statutory Authority and Determinations

**WHEREAS**, pursuant to Article III of the North Carolina Constitution and N.C. Gen. Stat. §§ 143A-4 and 143B-4, the Governor is the chief executive officer of the state and is responsible for formulating and administering the policies of the executive branch of state government; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 147-12, the Governor has the authority and the duty to supervise the official conduct of all executive and ministerial officers; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 166A-19.12(23), the North Carolina Division of Emergency Management (“NCEM”), the State Chief Information Officer (“State CIO”) of the North Carolina Department of Information Technology (“NCDIT”) and the Adjutant General of the North Carolina National Guard (“NCNG”) coordinate to manage the statewide response to cybersecurity incidents and significant cybersecurity incidents as defined in N.C. Gen. Stat. § 143B-1320 and that purview includes, but is not limited to, the classification and handling of restricted or highly restricted data through the Statewide Data Classification and Handling Policy, the development and promulgation of necessary policies, plans, and procedures for cybersecurity and critical infrastructure protection, and annual review, update, and testing of cybersecurity incident response plans and procedures; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 143B-1321(a)(5) NCDIT must plan and coordinate information technology efforts with state agencies, nonprofits, and private organizations as required; and

**WHEREAS**, pursuant to N.C. Gen. Stat. §§ 143B-1322(c)(5) and (11), the State CIO must ensure the security of state information technology systems and networks, as well as associated data, must develop standardized systems and processes, and is responsible for managing and protecting the State’s data; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 143B-1376, the State CIO shall be responsible for the security and privacy of all state information technology systems and associated data; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 143B-1376, the State CIO shall manage all executive branch information technology security and shall establish a statewide standard for information technology security and privacy to maximize the functionality, security, and interoperability of the State’s distributed information technology assets, including, but not limited to, data classification and management, communications, and encryption technologies.

**NOW, THEREFORE**, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED:**

**Section 1. Establishment of the Joint Cybersecurity Task Force**

The State of North Carolina Joint Cybersecurity Task Force is hereby established.

- a. Members from the following entities comprise the Task Force:
  1. The North Carolina Department of Information Technology/Enterprise Security and Risk Management Office.
  2. The North Carolina Division of Emergency Management.

3. The North Carolina National Guard.
4. The North Carolina Local Government Information Systems Association Cybersecurity Strike Team.
- b. A member from each of the following agencies is invited to participate in the Task Force:
  1. The North Carolina Information Sharing and Analysis Center.
  2. The Federal Bureau of Investigation.
  3. The United States Secret Service.
  4. Other federal agencies, North Carolina state agencies, or other stakeholders on an as-needed basis and upon invitation from the Task Force.

**Section 2. Partnering to Protect North Carolina Critical Infrastructure and Key Resources**

1. North Carolina public and private sector CIKR entities are strongly encouraged to report public-facing internet protocol addresses to the Task Force in order for the Task Force to assist those entities in identifying and responding to cybersecurity vulnerabilities.
2. North Carolina public and private sector CIKR entities are strongly encouraged to report significant cybersecurity incidents to the Task Force to mitigate the cascading impacts from a cybersecurity incident.
3. North Carolina public and private sector CIKR entities are strongly encouraged to coordinate significant cybersecurity incident response and recovery efforts with the Task Force.

**Section 3. No Private Right of Action**

This Executive Order is not intended to create, and does not create, any individual right, privilege or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of North Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof.

**Section 4. Effective Date and Duration**

This Executive Order is effective immediately. It shall remain in effect until rescinded, provided, however, that the Joint Cybersecurity Task Force may continue to operate upon expiration or repeal of this Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 16<sup>th</sup> day of March, in the year of our Lord two thousand twenty-two.

  
\_\_\_\_\_  
Roy Cooper  
Governor

ATTEST:

  
\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State







# State of North Carolina

**ROY COOPER**  
GOVERNOR

March 16, 2022

## EXECUTIVE ORDER NO. 255

### NOTICE OF TERMINATION OF EXECUTIVE ORDER NO. 196

**WHEREAS**, on February 15, 2021, a severe weather event, including a powerful EF-3 tornado, impacted Brunswick County; and

**WHEREAS**, the tornado led to the loss of life, the injury of residents, and severe property damage that threatened the well-being and health of residents of the State of North Carolina; and

**WHEREAS**, Executive Order No. 196, *Declaration of a State of Emergency*, was issued on February 24, 2021, to facilitate the recovery efforts necessitated by the damage from the tornado; and

**WHEREAS**, recovery efforts have concluded and this emergency declaration is therefore no longer necessary.

**NOW, THEREFORE**, by the power vested in me as Governor by the Constitution and laws of North Carolina, **IT IS ORDERED**:

Pursuant to N.C. Gen. Stat. § 166A-19.20(c), Executive Order No. 196 is hereby terminated immediately.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 16<sup>th</sup> day of March in the year of our Lord two thousand and twenty-two.

Roy Cooper  
Governor

**ATTEST:**

Elaine F. Marshall  
Secretary of State



**Note from the Codifier:** The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

**TITLE 02 – DEPARTMENT OF AGRICULTURE AND  
CONSUMER SERVICES**

Commission, please call a Commission staff attorney at 984-236-1850.

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Agriculture intends to adopt the rules cited as 02 NCAC 61 .0104, .0110, and amend the rules cited as 02 NCAC 61 .0101, .0102, .0105 and .0108.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://www.ncagr.gov/SPCAP/sleep/index.htm/>

**Proposed Effective Date:** August 1, 2022

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): Must be requested in writing within 15 days of notice. Any person may request a public hearing on the proposed rules by submitting a request in writing no later than (15 days following publication in Register) to James W. Burnette, Jr., Director, NCDA & CS Structural Pest Control and Pesticides Division, 1090 Mail Service Center, Raleigh NC 27699-1090.*

**Reason for Proposed Action:** *These rules under Chapter 61-Sanitation of Bedding are proposed for revision to allow current industry standards and practices of sanitation in North Carolina; to provide for alternative methods of bedding sanitation; to implement recordkeeping requirements to ensure accountability throughout the industry; and to facilitate compliance monitoring and insurance initiatives to protect consumers, public health, safety and welfare.*

**Comments may be submitted to:** James W. Burnette, Jr., 1090 Mail Service Center, Raleigh, NC 27699-1090; email [james.burnette@ncagr.gov](mailto:james.burnette@ncagr.gov)

**Comment period ends:** June 17, 2022

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact ( $\geq$  \$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

**CHAPTER 61 - SANITATION OF BEDDING**

**02 NCAC 61 .0101 DEFINITIONS**

The following definitions shall apply throughout these Rules:

- (1) "Chemical Method" means a process accomplished by application of a disinfectant registered by the U.S. Environmental Protection Agency and labeled as a disinfectant for bedding.
- ~~(1)~~(2) "Chief Financial Officer" means the officer or employee with primary bookkeeping responsibility for a business that ~~manufactures~~ manufactures, or sanitizes sanitizes, sells or offers to sell bedding in this State or manufactures and sells or offers to sell bedding to be sold in this state.
- (3) "Division" means the Structural Pest Control and Pesticides Division of the N.C. Department of Agriculture and Consumer Services.
- (4) "Dry Heat Method" means a process accomplished by conduction, where heat is absorbed by the exterior surface of an item and then passed inward to the next layer.
- ~~(2)~~(5) "Person" means an individual, corporation, company, partnership, or other legal entity.

Authority G.S. 106-65.107.

**02 NCAC 61 .0102 AUTHORIZED SANITIZING PROCESSES**

~~(a) In the dry heat process, secondhand or previously used bedding must be heated at a temperature of 230 degrees F. for a period of two hours. The chamber in which this process is performed must be insulated sufficiently to ensure maintenance of a uniform temperature of 230 degrees F. Articles to be sanitized must be placed on racks, or other devices provided therein so that a minimum space of six inches is left around each item being sanitized, and between the item and the walls, floor, ceiling, and other items. Loose materials to be sanitized must be placed on tiers or slats, or in other arrangements that permit an even distribution of heat throughout the material. A thermometer that~~

~~has been checked for accuracy within one degree F. must be placed within the chamber at a point where it can be read at all times through a window for that purpose.~~

~~(b) In the washing process, the bedding shall be boiled for two hours and washed with a soap or detergent. After drying, the bedding shall be free from dirt, marks, stains, or other offensive odors or materials.~~

~~(a) The dry heat process may be used to sanitize secondhand mattresses, innersprings, or similar covered in whole or in part by a porous material or fabric. In order to properly sanitize using the dry heat process:~~

- ~~(1) The bedding must be heated to a temperature of 230 degrees F. for a period of two hours. All chambers shall be insulated to ensure maintenance of uniform temperature of 230 degrees Fahrenheit and shall be tightly sealed to prevent any leakage of gases. Materials to be sanitized must be placed on racks, or other devices provided therein so that a minimum space of six inches is left around each item being sanitized, and between the item and the walls, floor, ceiling, and other items;~~
- ~~(2) Loose materials to be sanitized must be placed on tiers or slats, or in other arrangements that permits an even distribution of heat throughout the material; and~~
- ~~(3) A thermometer that has been checked for accuracy within one-degree Fahrenheit must be placed within the chamber at a point(s) where it can always be easily read to determine the temperature accuracy of the equipment.~~

~~(b) The chemical method of sanitizing is authorized if performed in accordance with the requirements of this Rule. Only those products evaluated and registered by the US Environmental Protection Agency (EPA) and the Division, as approved for use as disinfectants of articles of bedding shall be used. The product used must clearly state, on the label or on printed materials included on each container or package, detailed instructions for its use in disinfecting articles of bedding. It is a violation of this Rule to use an unregistered product, or to use a registered product in a manner inconsistent with its label or accompanying printed material, in the sanitizing process.~~

~~(c) In the washing process, the bedding shall be boiled for two hours and washed with a soap or detergent. After drying, the bedding shall be free from dirt, marks, stains, or other offensive odors or materials.~~

*Authority G.S. 106-65.107.*

## **02 NCAC 61 .0104 RECORDKEEPING FOR SANITIZATION**

~~(a) A person who sanitizes previously used material or bedding shall keep a record of the kind of material and bedding which has been sanitized, that is available for inspection by the Division.~~

~~(b) The record shall be retained on the business premises and/or with each mobile unit for not less than two years and shall be made available for inspection by the Division upon request.~~

~~(c) The record shall include the following:~~

- ~~(1) the date of sanitization;~~

- ~~(2) the sanitization method used;~~
- ~~(3) the kind of materials and types of items sanitized;~~
- ~~(4) the unit number of bedding articles sanitized;~~
- ~~(5) a list of all chemicals, including EPA Reg. numbers, total amount applied per application used in the pre- and post-sanitizing process; and~~
- ~~(6) the name of the person and/or company performing the sanitization.~~

*Authority G.S. 106-65.107.*

## **02 NCAC 61 .0106 .0105 STORAGE OF SECONDHAND OR PREVIOUSLY-USED MATERIALS**

When secondhand bedding or previously-used materials that have not been sanitized are stored in a bedding manufacturing establishment, a sanitizing business, a retail outlet, a distribution warehouse, or in the same room with new or sanitized bedding or bedding materials, the secondhand bedding or previously-used materials must be segregated at all times from the new or sanitized bedding or bedding ~~materials, materials:~~

- ~~(1) by partitions that are free of holes, cracks, or other openings. The top of the partitions must be at least one foot higher than the level of the unsanitized ~~materials, materials; or~~~~
- ~~(2) by complete separation by a minimum of six feet.~~

*Authority G.S. 106-65.98; 106-65.107.*

## **02 NCAC 61 .0109 .0108 LICENSE FEES AND APPLICATIONS**

(a) Applications for a license shall be on a form provided by the Division and shall include the following information:

- (1) the name of the business;
- (2) the physical address for the plant or operation;
- (3) the name, title, mailing address, and telephone number and email address if available, for the contact person for the license; and
- (4) the type of bedding items the business ~~manufactures. manufactures, sanitizes or renovates.~~

(b) The applicant shall submit a verification from the applicant's chief financial officer that he has examined the records of the applicant and that the information provided in accordance with G.S. 106-65.103 correctly reflects the information contained in the records of the applicant. However, if the Division has reason to believe that the information provided is incomplete, misleading or incorrect, the Division may require the applicant to obtain a certification of the required information by an independent Certified Public Accountant licensed to practice in North Carolina.

(c) License fees, in accordance with G.S. 106-65.103, shall be paid in full on March 1 of each year or in quarterly installments on March 1, June 1, September 1, and December 1 of each year. Applicants who have not operated for a full calendar year may owe additional fees or be due a refund for the first year's operation, depending on the business volume eligible for stamp exemption fee payment. Application forms for making the

determination of fee payment owed or refunded shall be furnished by the Division. When the requirements of G.S. 106-65.103(a) can be met, the option described by G.S. 106-65.103(b) will no longer be available to the applicant.

(d) Applicants who have gone out of business in the initial year of their operation and who have paid the license fee in accordance with G.S. 106-65.103 may apply for a refund for the remainder of the calendar year upon providing verified proof of the bedding units sold or manufactured in North Carolina during the operating portion of the calendar year.

(e) All forms may be obtained from the Division at [www.ncagr.gov/SPCAP/Sleep/beddinglicense.htm](http://www.ncagr.gov/SPCAP/Sleep/beddinglicense.htm).

*Authority G.S. 106-65.103; 106-65.107.*

## **02 NCAC 61 .0111 ~~.0110~~ DURABLE MATERIALS FOR TAGS**

In addition to the requirements set forth in G.S. 106-65.99, identifying tags shall be of linen, muslin, white vellum cloth, or other durable ~~cloth~~ material of comparable quality that will not flake when abraded and shall not be easily torn. ~~abraded~~. Paper or plastic face tags shall not be allowed. Tags shall be printed or stamped on one side only in colorfast black letters that will not fade or wash out. Tags shall be so located that the information contained thereon is visible to the purchaser at all times and shall be securely attached or sewn ~~sewed~~ to the pillows, mattresses, sleeping bags, comforters, and other articles of bedding. Tags shall not be altered or defaced in any manner. The labeling requirements of another governmental unit may appear on the tag.

*Authority G.S. 106-65.99; 106-65.107.*

## **TITLE 12 – DEPARTMENT OF JUSTICE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Sheriffs' Education and Training Standards Commission intends to amend the rule cited as 12 NCAC 10B .0603.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://ncdoj.gov/law-enforcement-training/sheriffs/all-commission-forms-publications/>

**Proposed Effective Date:** *August 1, 2022*

### **Public Hearing:**

**Date:** *May 3, 2022*

**Time:** *12:00 p.m.*

**Location:** *1700 Tryon Park Drive, Raleigh, NC 27610*

**Reason for Proposed Action:** *To provide certified deputies with an option to complete a limited detention officer certification course to become dually certified officers.*

**Comments may be submitted to:** *Sirena Jones, 1700 Tryon Park Drive, Raleigh, NC 27610; phone (919) 779-8213*

**Comment period ends:** *June 17, 2022*

## **Procedure for Subjecting a Proposed Rule to Legislative**

**Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☐ **State funds affected**
- ☐ **Local funds affected**
- ☐ **Substantial economic impact (>= \$1,000,000)**
- ☐ **Approved by OSBM**
- ☒ **No fiscal note required**

## **CHAPTER 10 - SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION**

### **SUBCHAPTER 10B - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION**

#### **SECTION .0600 - MINIMUM STANDARDS OF TRAINING FOR DETENTION OFFICERS**

### **12 NCAC 10B .0603 EVALUATION FOR TRAINING WAIVER**

(a) ~~Only applicants~~ Applicants for detention officer certification with prior detention or correctional officer experience who have been employed and certified as a detention or correctional officer may seek a training waiver evaluation pursuant to this ~~Rule~~ Section.

(b) The Division shall use the following to evaluate a detention officer's training and experience to grant a waiver:

- (1) Persons who separated from a detention officer position during the probationary period after completion of a commission-certified detention officer training course and who have been separated from a detention officer position for more than one year shall complete a subsequent commission-certified detention officer training course in its entirety and pass the State Comprehensive Examination within the 12 month probationary period as set forth in Rule .0602(a) of this Section.
- (2) Persons who separated from a detention officer position during their probationary period after completion of a commission-certified detention officer training course and who have been separated from a detention officer position for

one year or less shall serve the remainder of the initial probationary period in accordance with G.S. 17E-7(b), but need not complete an additional training program.

- (3) Persons who separated from a detention officer position during the probationary period without completion of a detention officer training course or whose certification was suspended pursuant to Rule .0204(b)(1) of this Subchapter and who have remained separated or suspended for over one year shall complete a commission-certified detention officer training course in its entirety and pass the State Comprehensive Examination, and shall be allowed a 12 month probationary period as prescribed in Rule .0602(a) of this Section.
- (4) Persons holding General Detention Officer Certification who completed a commission-certified detention officer training course and who separated from a detention officer position for more than one year shall complete a subsequent commission-certified detention officer training course in its entirety and pass the State Comprehensive Examination within the 12 month probationary period as prescribed in Rule .0602(a) of this Section.
- (5) Persons holding Grandfather Detention Officer Certification who separate from a detention officer position and remain separated from a detention officer position for more than one year shall complete a commission-certified detention officer training program in its entirety and pass the State Comprehensive Examination within the 12 month probationary period as prescribed in Rule .0602(a) of this Section.
- (6) Persons transferring to a sheriff's office from another law enforcement agency who hold a detention officer certification issued by the North Carolina Criminal Justice Education and Training Standards Commission are subject to evaluation of their prior training and experience on an individual basis. The Division shall review the training received against the training required by Rule .0601 of this Section and determine whether that training is comparable to the requirements set out in Rule .0601 based upon topics covered and determine what additional training, if any is required under Rule .0601.

(c) The Division shall use the following ~~to evaluate~~ evaluation a correction officer who holds a general certification as a correctional officer training and experience to grant a waiver if the individual has general certification as a correctional officer issued by the North Carolina Criminal Justice Education and Training Standards Commission;

- (1) completed training as a correctional officer between January 1, 1981 and August 1, 2002;

- (2) transfer to a sheriff's office or a district confinement facility in a detention officer position; and
- (3) have had less than a one year break in service shall:

- (A) serve a 12-month probationary period as set forth in Rule .0602(a) of this Section; and
- (B) take and successfully complete the state examination in its entirety during that probationary period after completing the following topic areas in a commission-certified detention officer certification course:
 

Orientation	3 hours
Legal Aspects of Management & Supervision	14 hours
Medical Care in the Jail	6 hours
Investigative Process in the Jail	8 hours
Criminal Justice System	2 hours
Introduction to Rules and Regulations Governing Jails	2 hours
Subject Control Techniques	32 hours
<b>TOTAL HOURS</b>	<b>67 hours</b>

(d) The Division shall use the following ~~to evaluate~~ evaluation a correction officer who holds a general certification as a correctional officer training and experience to grant a waiver if the individual has general certification as a correctional officer issued by the North Carolina Criminal Justice Education and Training Standards Commission who:

- (1) completed training as a correctional officer after August 1, 2002;
- (2) transfer to a sheriff's office or a district confinement facility in a detention officer position; and
- (3) have had less than a one year break in service shall:
  - (A) submit documentation of the training completed as a correctional officer. The Division shall review the training received against the training required by Rule .0601 of this Section and determine whether that training is comparable to the requirements set out in Rule .0601 based upon topics covered and determine what additional training, if any is required under Rule .0601. The Division shall notify the employing agency of the resulting training requirements; and
  - (B) take and successfully complete the state examination in its entirety during the probationary period after completing the required training in a commission-certified Detention Officer Certification Course.

(e) Applicants for detention officer certification who hold probationary or general deputy sheriff certification with the North Carolina Sheriffs' Education and Training Standards Commission shall be granted a training waiver pursuant to this Section provided the individual:

- (1) has successfully completed the NC Basic Law Enforcement Training Course; and
- (2) has had no break in service as a deputy sheriff exceeding one year.

(f) Applicants eligible for a waiver under this Section shall:

- (1) serve a 12-month probationary period as a detention officer, as set forth in Rule .0602(a) of this Section; and
- (2) take and successfully complete the state examination in its entirety during that probationary period after completing the following topic areas in a Commission-certified detention officer certification course:

Course Orientation	3 hours
Ethics	3 hours
Fire Emergencies	4 hours
Aspects of Mental Illness	6 hours
Review and Testing	6 hours
Legal Aspects of Management and Supervision	14 hours
Contraband/Searches	6 hours
Medical Care in the Jail	6 hours
Patrol and Security Function of the Jail	5 hours
Key and Tool Control	2 hours
Supervision and Management of Inmates	5 hours
Suicides and Crisis Management	5 hours
Introduction to Rules and Regulations	2 hours
Stress	3 hours
Prison Rape Elimination Act	2 hours
<b>TOTAL HOURS</b>	<b>72 hours</b>

(g) Applicants for detention officer certification who hold probationary or general deputy sheriff certification with the North Carolina Sheriffs' Education and Training Standards Commission may enroll in a bifurcated Detention Officer Certification Course provided the individual:

- (1) has successfully completed the NC Basic Law Enforcement Training Course; and
- (2) has had no break in service as a deputy sheriff exceeding one year.

(h) Applicants eligible for a waiver under this Section shall:

- (1) serve a 12-month probationary period as a detention officer, as set forth in Rule .0602(a) of this Section; and
- (2) take and successfully complete the state examination in its entirety during that probationary period after completing the following topic areas in a bifurcated Detention Officer Certification Course:

Course Orientation	3 hours
Ethics	3 hours

Fire Emergencies	3 hours
Aspects of Mental Illness	6 hours
Review and Testing	8 hours
Legal Aspects of Management and Supervision	14 hours
Legal Authority of a Detention Officer	4 hours
Contraband/Searches	6 hours
Medical Care in the Jail	6 hours
Patrol and Security Function of the Jail	5 hours
Key and Tool Control	2 hours
Supervision and Management of Inmates	5 hours
Suicides and Crisis Management	5 hours
Introduction to Rules and Regulations	2 hours
Stress	3 hours
Prison Rape Elimination Act	2 hours
<b>TOTAL HOURS</b>	<b>78 hours</b>

Authority G.S. 17E-4; 17E-7.

## TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02E .0403-.0409 and readopt with substantive changes the rules cited as 15A NCAC 02E .0401 and .0402.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://deq.nc.gov/news/events/public-notice-hearings>

**Proposed Effective Date:** January 1, 2023

### Public Hearing:

**Date:** May 5, 2022

**Time:** 6:00 p.m.

**Location:** In order to allow the public to attend from great distances across the state and to address protective measures to help prevent the spread of COVID-19, the NC Division of Water Resources is holding an online public hearing.

The hearing can be joined via WebEx link (below) starting at 5:45 pm.

<https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=e3575fac4c38ac85a1fc8da642fcc1d4a>

Event number: 2422 890 1417

Event password: NCDEQ

Audio conference: US TOLL +1-415-655-0003, access code: 2422 890 1417

Registration Form link: <https://forms.office.com/g/eNgY0c9z5c>

Registration Form QR Code:



Registration must be completed by 12:00 pm on May 5, 2022. If you have any problems registering online, please call 919-707-9024 by the registration deadline of 12:00 pm on May 5, 2022.

The Division of Water Resources highly recommends testing your computer's WebEx capabilities prior to the hearing at <https://www.webex.com/test-meeting.html>. For instructions about digital ways to join the public hearing, please refer to the WebEx Help Center online at <https://help.webex.com/en-us/>.

To comment during the hearing after your name is called as a registered speaker and/or after the hearing officer asks if any people wish to comment following the registered speakers:

-If you join the hearing by phone, press \*3 to "raise your hand," speak once called upon to do so, and press \*3 again to "lower your hand."

-If you join the hearing online, press the hand icon to "raise your hand," speak once called upon to do so, and press the hand icon again to "lower your hand."

-The Hearing Officer may limit the length of time that you may speak, so that all those who wish to speak may do so.

**Reason for Proposed Action:** N.C. Gen. Stat. §150B-21.3A requires state agencies to review existing rules every 10 years, determine which rules are still necessary, and either re-adopt or repeal each rule as appropriate. The proposed rulemaking satisfies these requirements for the re-adoption process for the following 15A NCAC 02E –Water Use Registration and Allocation Rules:

#### .0400 Regulation of Surface Water Transfers

The .0400 - Regulation of Surface Water Transfers defined interbasin transfer (IBT) as the withdrawal, diversion, or pumping of surface water from one river basin that is then discharged in a different river basin. The purpose of the IBT statute is to ensure it is good public policy to move water from one basin into another. G.S. 143-215.22G also established 18 major river basins and 38 subbasins.

Proposed changes and amendments to 15A NCAC 02E Water Use Registration and Allocation Rules, .0400 Regulation of Surface Water Transfers include:

- added statement of purpose
- added definitions
- relocated applicability language
- added notification and requirement
- added language for types of environmental documentation needed
- added language for requirement in an IBT petition
- added language clarifying the settlement/mediation process
- added language clarifying what items the Commission may need to make a final determination

- added language clarifying emergency and temporary transfers

**Comments may be submitted to:** Linwood Peele, NC DEQ-DWR Planning Section, 1611 Mail Service Center, Raleigh, NC 27699-1611; phone (919) 707-9024; email [linwood.peele@ncdenr.gov](mailto:linwood.peele@ncdenr.gov)

**Comment period ends:** June 17, 2022

#### **Procedure for Subjecting a Proposed Rule to Legislative Review:**

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☒ State funds affected
- ☒ Local funds affected
- ☐ Substantial economic impact ( $\geq$  \$1,000,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required

## CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

### SUBCHAPTER 02E - WATER USE REGISTRATION AND ALLOCATION

#### SECTION .0400 - REGULATION OF SURFACE WATER TRANSFERS

##### **15A NCAC 02E .0401 APPLICABILITY PURPOSE**

~~(a) Pursuant to G.S. 143-215.22G(3), the amount of a transfer shall be determined by the amount of water moved from the source basin to the receiving basin, less the amount of the water returned to the source basin.~~

~~(b) Pursuant to G.S. 143-215.22G(3)(a) and 143-215.22G(3)(b), and notwithstanding the definition of basin in G.S. 143-215.22G(1), the following are not transfers:~~

- (1) The discharge point is situated upstream of the withdrawal point such that the water discharged will naturally flow past the withdrawal point.
- (2) The discharge point is situated downstream of the withdrawal point such that water flowing past the withdrawal point will naturally flow past the discharge point.

~~(c) The withdrawal of surface water from one river basin by one person and the purchase of all or any part of this water by another party, resulting in a discharge to another river basin, shall be considered a transfer. The person owning the pipe or other conveyance that carries the water across the basin boundary shall be responsible for obtaining a certificate from the Commission. Another person involved in the transfer may assume responsibility for obtaining the certificate, subject to approval by the Division of Water Resources.~~

~~(d) Under G.S. 143-215.22I(b), a certificate is not required to transfer water from one river basin to another up to the full capacity of a facility to transfer water from one basin to another if the facility was existing or under construction on July 1, 1993. The full capacity of a facility to transfer water shall be determined as the capacity of the combined system of withdrawal, treatment, transmission, and discharge of water, limited by the element of this system with the least capacity as existing or under construction on July 1, 1993.~~

~~The purpose of the rules in this Section is to implement the provisions of G.S. 143-215.22L.~~

*Authority G.S. 143-215.22G; 143-215.22I; 143B-282(a)(2).*

## **15A NCAC 02E .0402 JUDICIAL REVIEW**

### **DEFINITIONS**

~~Judicial Review of the Commission's decision shall be as provided in G.S. 143-215.5.~~

The following definitions apply to this Section.

- (1) "Co-applicant" means an entity other than the primary applicant identified on an Interbasin Transfer Certificate, issued after 30 June 1993, as being eligible to send or receive transferred water, often purchased from the primary applicant. A co-applicant is subject to all the terms, conditions, limitations, benefits, and entitlements applicable to the primary applicant.
- (2) "Commission" means the Environmental Management Commission.
- (3) "Department" means the North Carolina Department of Environmental Quality.
- (4) "Division" means the Division of Water Resources.
- (5) "Emergency transfer" means a temporary transfer surface water between river basins, as defined in G.S. 143-215.22G(1b), in order to satisfy water demand needs as defined in G.S. 143-215.22L(q), for anticipated or unanticipated situations in which the public health, safety, or welfare requires a transfer of water.
- (6) "Grandfathered capacity" means the existing water system transfer capacity prior to 1 July 1993, as defined in G.S. 143-215.22L(b). The transfer capacity of a water system is limited by its most restrictive system element: potable water capacity, maximum transfer capacity of distribution system, or discharge capacity in receiving basin.

(a) Potable water capacity is the sum of all surface water inputs to the system including, water treatment plant capacity and regular surface water contracts.

(b) Maximum transfer capacity of the distribution network is the calculation of the physical ability of the distribution system to transmit water across a basin boundary, based on pipe sizing or pump systems.

(c) Discharge capacity in the receiving basin is a combination of wastewater discharges and consumptive losses.

(7) "Interbasin Transfer Certificate" or "IBT Certificate" means an authorization issued by the Commission to transfer up to a specified amount of water between two river basins as defined in G.S. 143-215.22G(1b).

(8) "Large community water system" means a community water system, as defined in G.S. 130A-313(10), that regularly serves 1,000 or more service connections or 3,000 or more individuals.

(9) "Major river basin" means the combination of the river basins, as defined in G.S. 143-215.22G(1b) sharing the numerical digits preceding the hyphen.

(10) "Primary applicant" means the entity who owns an existing or planned water line used to transmit raw or finished water from one river basin to another, as defined in G.S. 143-215.22G(1b). For water systems that involve crossing multiple river basin boundaries, the primary applicant represents the transfer pipe owner where the first river basin boundary crossing occurs.

*Authority G.S. 143-215.5; 143-215.22L; 143B-282(a)(2).*

## **15A NCAC 02E .0403 APPLICABILITY**

(a) The amount of a transfer shall be calculated as a net total, determined by the amount of surface water moved from the source river basin to the receiving basin, minus any water returned to the source river basin.

(b) Notwithstanding the definition of "river basin" in G.S. 143-215.22G, the following are not transfers:

(1) The discharge point is situated upstream of the withdrawal point such that the water discharged will naturally flow past the withdrawal point.

(2) The discharge point is situated downstream of the withdrawal point such that water flowing past the withdrawal point will naturally flow past the discharge point.

(3) The withdrawal and discharge points are located in the same water impoundment.

(c) The withdrawal of surface water from one river basin by one entity and the transmission of all or any part of this water by one or more entities, resulting in a discharge to another river basin.



shall be considered a transfer. The entity owning the pipe or other conveyance that carries the surface water across the basin boundary shall be responsible for obtaining an IBT Certificate from the Commission. Another entity involved in the transfer may assume responsibility for obtaining the IBT Certificate, with approval by the Department.

(d) The full capacity of a facility to transfer water shall be determined as the capacity of the system's potable water capacity, maximum transfer capacity of distribution system, or discharge capacity in the receiving basin, limited by the element of this system with the least capacity as existing or under construction on 1 July 1993. Existing conveyances and infrastructure for basin transfers in place before 1 July 1993 are deemed grandfathered, per G.S. 143-215.22L(b).

(e) To calculate a grandfathered transfer, the applicant shall provide data regarding the movement of water within and outside of the water system distribution system. The applicant shall provide to the Department a current and projected water balance that includes:

- (1) the total withdrawal from the surface water source;
- (2) the treatment capacities;
- (3) the consumptive losses, meaning water withdrawn from a stream, reservoir, river, or other surface water source for any use which is not directly returned to a waterbody, for both the source and receiving river basins;
- (4) the treated wastewater discharges in both the source and receiving river basins;
- (5) the total return to the source river basin; and
- (6) the total surface water transfer.

The applicant shall provide this information for the current or baseline year and projected data for a minimum of 30-years into the future in no more than 10-year intervals. Water balances are to be conducted on an annual average day basis and a maximum-month average day basis. The applicant may use the Grandfathered Transfer Capacity Worksheet as a guide to complete the required information to help calculate and document a system's transfer capacity. A copy of the Grandfathered Transfer Capacity Worksheet can be obtained free of charge from the Water Supply Planning Branch, located in the Archdale Building at 512 N. Salisbury Street, Raleigh, NC 27604.

*Authority G.S. 143-215.22G; 143-215.22L; 143B-282(a)(2).*

#### **15A NCAC 02E .0404 NOTIFICATION**

(a) As used in G.S. 143-215.22L(c)(3)(c), notification of the "governing body of any public water system" refers to public water systems that use surface water as their source rather than groundwater. The governing body may be located in a state adjoining North Carolina that is located in whole or in part of the surface drainage basin area of the source river basin.

(b) Notice shall be provided to all persons who hold a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit for 100,000 gallons per day or more for a discharge located within the area denoted by one of the eight-digit cataloging units listed in G.S. 143-215.22L(c)(2)(b) in which the withdrawal or discharge will occur.

(c) Comments submitted pursuant to G.S. 143-215.22L(c), (e), and (j) that are received after the 30-calendar day comment period shall not be considered in making determinations unless the Department extends the comment period.

(d) Notification is to be printed in a single newspaper of general circulation, as defined in G.S. 1-597, for each county in which notification is required as defined in G.S. 143-215.22L(c)(2)(b).

*Authority G.S. 143-215.22L; 143B-282(a)(2).*

#### **15A NCAC 02E .0405 ENVIRONMENTAL DOCUMENTS**

(a) An evaluation of beneficial and adverse impacts pursuant to G.S. 143-215.22L(d)(1)(3) shall include, but not be limited to, the results of an approved basinwide hydrologic model specified in G.S. 143-355(o), if available. The Applicant is responsible for any necessary model modifications, scenario development, and analysis of results. All model modifications and scenarios must be approved by the Department. All basinwide models used shall be publicly available. The corresponding modeling results shall be made publicly available.

(b) For purposes of this Rule, an alternative is considered economically infeasible if the demonstrated financial costs exceed the applicants' ability to cover the cost of the action, even when considered on at least a 30-year projection.

(c) The required environmental document shall include projections of future water supply, transfers, and demands with a planning horizon of at least 30 years. The current or baseline year shall be determined on available data and estimated timing of by the Division based environmental document submittal. Projections shall be conducted on 10-year increments, at a maximum.

*Authority G.S. 143-215.22L; 143B-282(a)(2).*

#### **15A NCAC 02E .0406 PETITION**

(a) The evaluation of impacts to reservoir water levels shall take into consideration the purposes for which the reservoir was constructed, and any mandatory management activities required to maintain the reservoir per any binding agreements between two or more parties related to such purposes.

(b) Reasonably foreseeable future water supply needs shall mean the projected water transfers necessary to meet demands for not less than 30 years from the year in which the Notice of Intent is filed in compliance with G.S. 143-215.22L(c).

(c) Unless already approved by the Division, an updated local water supply plan meeting the requirements set forth in G.S. 143-355(l) for the previous full calendar year shall be submitted to the Division for review and approval. Once approved, the plan shall be adopted by the local government, large community water system governing board, or other appropriate governing board.

*Authority G.S. 143-215.22L; 143B-282(a)(2).*

#### **15A NCAC 02E .0407 SETTLEMENT/MEDIATION**

The Commission may appoint a mediation officer to initiate settlement discussions. The mediation officer shall follow the most recent guidance or mediation and settlement procedures approved by the Commission.

*Authority G.S. 143-215.22L; 143B-282(a)(2).*

**15A NCAC 02E .0408 FINAL DETERMINATION**

(a) The water conservation plan shall meet all the requirements of G.S. 143-215.22L(n)(1). Any proposed ordinances, initiatives, or programs shall be approved by the unit of local government within 90 calendar days of issuance of the IBT Certificate to document the water conservation efforts.

- (1) An applicant shall review the existing water conservation measures for all public water systems who utilize surface water in the source basin.
- (2) Based upon this review, the applicant shall demonstrate, in the water conservation plan, that their existing or proposed water conservation measures equal or exceed the most stringent water conservation plan by any public water system in the source basin. The water conservation plan is subject to approval by the Department.

(b) Examples of metrics for supply-side water conservation measures may include:

- (1) regularly conducted water system water audits, where the schedule and methodology used are outlined;
- (2) a flushing optimization plan and accounting of use by fire department;
- (3) a leak detection program where the repair program abilities are described;
- (4) storage tank level and pressure management;
- (5) water meter replacement;
- (6) metering testing schedule;
- (7) a plan to identify failing meters; and
- (8) details of any existing water reuse programs.

(c) Examples of metrics for demand-side water conservation measures may include:

- (1) a rate pricing structure that incentivizes customers to use less water than they typically do while discouraging the wasting of water;
- (2) public outreach and education programs;
- (3) encouraging all households to conduct simple water audits to improve individual water conservation and efficiency measures;
- (4) the use of irrigation controls, including schedule restrictions, a ban on watering impervious surfaces, a separate conservation rate pricing structure;
- (5) encourage the use of mulch, and the use of drought tolerant plants and grass species;
- (6) the use of water conservation irrigation devices including rain or soil moisture sensors, rain barrels or cisterns to collect rainwater for outdoor irrigation;
- (7) registration of, and accounting for, pre-arranged (bulk) potable water usage sales;
- (8) separate meters for outdoor irrigation; and
- (9) encouraging the replacement of older, inefficient water fixtures with more water-efficient fixtures and devices.

(d) Pursuant to G.S. 143-215.22L(n)(7), the certificate shall include all current and anticipated applicants and co-applicants. To be eligible to receive transferred water under a certificate, any public water system not listed as the primary applicant on a certificate but is anticipated to receive transferred water made available through a certificate at any time, present or future, shall be identified as a co-applicant on the certificate. All water systems beyond the applicant, that serve customers or sell transferred water in the receiving basin, shall be listed as co-applicants in the petition document. This shall include any projected water sales that are anticipated to occur during the planning period identified in the Petition. A modification to the certificate shall be necessary for sales to entities not listed on the certificate.

(e) Water use in receiving basins by water systems or wholesale customers not listed as co- applicants, or are not listed in a modification, shall be considered a violation of the terms of the certificate and could result in the Commission rescinding the certificate. Allowable emergency transfers as outlined in Rule .0409 of this Section are not subject to this Paragraph.

(f) As used in G.S. 143-215.22L(m), detriment means harmful or damaging conditions not caused by a natural condition where an entity with a Department approved water use cannot carry out the beneficial uses for which the water use was granted.

(g) As used in G.S. 143-215.22L(k), 143-215.22L(m), and 143-215.22L(n), detrimental effects means harmful or damaging effects to the water quality, water quantity, fish and wildlife habitat, wastewater assimilation, navigation, electric power generation, public water supplies, and other industrial, economic, recreational, or agricultural water supply needs within either the source or receiving river basins due to the proposed water transfer.

*Authority G.S. 143-215.22L; 143B-282(a)(2).*

**15A NCAC 02E .0409 EMERGENCY TRANSFERS**

(a) An emergency or temporary transfer of water may be requested in situations resulting from unexpected events such as drought, water quality event, damage to waterlines, water treatment plant failure, casualty, or other unanticipated situation. An emergency or temporary transfer of water may also be requested in short-term anticipated and necessary situations such as pipeline testing for capability or capacity to avoid unexpected line failures, hydrostatic testing, testing the emergency connections of interconnected systems, or making necessary repair to service lines to avoid disruption of service. Emergency transfers shall not take the place of, or be issued in lieu of, a permanent or modified transfer certificate.

(b) To request an emergency or temporary transfer, the applicant shall submit, either in writing, or electronically, to the Department:

- (1) the nature of the event that is prompting the transfer request;
- (2) the affected river basins between which the requested emergency or temporary transfer would occur;
- (3) the estimated quantity of water to be transferred; and
- (4) the anticipated duration of the requested emergency or temporary transfer.

(c) It shall be demonstrated in the request that practices and policies are in effect with the purpose of reducing water usage for the duration of the approved emergency or temporary transfer.

(d) Within 60 calendar days from the end of the approved transfer period, the transfer recipient shall submit to the Department a summary report detailing the transfer event. The report shall include updated information as they pertain to all of the items required in the initial request.

(e) In cases of an emergency where a transfer cannot be requested beforehand due to extenuating circumstances, the transfer recipient shall notify the Division that the transfer has occurred within 72 hours. Within 60 calendar days after the transfer is completed, the applicant shall submit to the Department a summary report detailing the transfer event, the report shall be submitted either in writing or electronically to the Department and shall include:

- (1) the nature of the event initiating the transfer;
- (2) the affected river basins between which the transfer occurred;
- (3) the estimated quantity of water transferred; and
- (4) the duration of the transfer.

(f) Public water systems with existing conveyances or infrastructure to conduct a transfer, but do not have an IBT Certificate or grandfathered allowance, may request an emergency or temporary transfer, whereby the transfer can be initiated without immediate notice should an emergency or temporary event arise. These plans must be resubmitted to the Department for renewal every six months. The transfer may occur all at once, at a regular recurring interval, or on an irregular basis. Summary reports will be required for all emergency or temporary transfers within 60 days following any event.

Authority G.S. 143-215.22L; 143B-282(a)(2).

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02P .0101, repeal the rule cited as 15A NCAC 02P .0102, and readopt with substantive changes the rules cited as 15A NCAC 02P .0103, .0201, .0202, .0301, .0302 and .0401-.0407.*

*Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules/proposed-rules>

**Proposed Effective Date:** September 1, 2022

**Public Hearing:**

**Date:** May 9, 2022

**Time:** 4:00 p.m.

**Location:** A virtual public hearing will be held by webinar as follows:

*WebEx Event Attendee Meeting Link:*

*<https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=e85981e6eeaa7fc4eecd48bb8672ab94>*

*Event number: 2431 989 5266*

*Event password: 1234*

*To join by phone: Call +1-415-655-0003 US TOLL, enter access code 2431 989 5266*

*If you wish to attend the hearing, you must register before 5:00 p.m. on Friday, May 6, 2022.*

*The registration form can be found at the following link: <https://forms.office.com/g/v93CK6c3zz>.*

**Reason for Proposed Action:**

**Rule .0101** is proposed for amendment to make technical corrections and updates.

**Rule .0102** is proposed for repeal because it is no longer necessary.

*The remaining rules are proposed for readoption in accordance with G.S. 150B-21.3A. The amendments to the rules proposed for readoption are intended to make technical corrections and updates, to be consistent with current practice, to provide clarification, and to provide applicants with an informal appeal process for Departmental decisions. The amendments are also proposed to remove references to the phased-out noncommercial leaking petroleum UST cleanup fund, to be consistent with the changes made by S.L. 2015-241.*

**Comments may be submitted to:** Brion Byers, 1646 Mail Service Center, Raleigh, NC 27699-1646; email [dwm.publiccomments@ncdenr.gov](mailto:dwm.publiccomments@ncdenr.gov)

**Comment period ends:** June 17, 2022

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☒ **State funds affected**
- ☒ **Local funds affected**
- ☐ **Substantial economic impact (>= \$1,000,000)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required**

**CHAPTER 02 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02P - COMMERCIAL LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUNDS FUND**

**SECTION .0100 - GENERAL CONSIDERATIONS**

**15A NCAC 02P .0101 GENERAL**

- (a) ~~The purpose of this~~ This Subchapter is to establish ~~establishes~~ criteria and procedures for the reimbursement of costs incurred by owners, operators, and landowners from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Funds Fund.
- (b) ~~The Groundwater Section~~ Underground Storage Tank (UST) Section, hereafter referred to as "the Section," of the Division of Environmental Waste Management of the Department of Environment, Health and Natural Resources Environmental Quality (DEQ), hereafter referred to as "the Department," shall administer the Commercial and Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Funds Fund for the State of North Carolina.
- (c) ~~As authorized by G.S. 14-3215.94G, the Department may engage in cleanup work it deems appropriate and pay the costs from the Noncommercial Fund in accordance with G.S. 14-3215.94D.~~
- (d)(c) The Department may engage in investigations assessment and cleanups remedial work pursuant to the authority as set forth in G.S. 143-215.94G in accordance with the severity of threat to human health and safety and to the environment, 15A NCAC 02L and subject to the availability of resources, as determined by the Division. Department.

*Authority G.S. 143-215.3; ~~143-215.76;~~ 143-215.94B; ~~143-215.94D;~~ 143-215.94E; 143-215.94G; 143-215.94L; 143-215.94T; 143B-282.*

**15A NCAC 02P .0102 COPIES OF RULES INCORPORATED BY REFERENCE**

*Authority G.S. 12-3.1(c); 143-215.3; 143-215.94L; 143-215.94T; 143B-282; 150B-21.6.*

**15A NCAC 02P .0103 FALSE OR MISLEADING INFORMATION**

~~Any owner or operator~~ If any owner, operator, or authorized agent who knowingly submits any false or misleading information with regard to ~~these the Rules may rules of this Subchapter, and if the false or misleading information results in delay of any efforts to stop the discharge or release, results in delay of detection of any portion of the discharge or release, or results in delay of investigatory or remedial activities, then that owner, operator, or authorized agent shall~~ be considered to be contributing to a discharge, discharge or release, interfering with the mitigation of a discharge or release pursuant to G.S. 143-215.94E(g)(1). 143-215.94E(g)(1) if the false or misleading information results in delay of any efforts to stop the release or discharge, results in delay of detection of any portion of the discharge or release, or results in delay of investigatory or remedial activities.

*Authority G.S. 143-215.3; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282.*

**SECTION .0200 - PROGRAM SCOPE**

**15A NCAC 02P .0201 APPLICABILITY**

- (a) This Subchapter shall apply to the disbursement of funds from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund and ~~Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund~~, and to the collection of annual operating fees.
- (b) Any portions of this Subchapter which concern annual tank operating fees apply to all owners and operators of Commercial Underground Storage Tanks that have been in use in North Carolina on or after January 1, 1989.
- (c) This Subchapter shall apply to discharges or releases from ~~noncommercial or~~ commercial underground storage tank systems, regardless of whether such systems are regulated under ~~Subchapter 2N of Title 15A, of the North Carolina Administrative Code. 15A NCAC 02N.~~

*Authority G.S. 143-215.3; 143-215.94B; 143-215.94C; ~~143-215.94D;~~ 143-215.94E.*

**15A NCAC 02P .0202 DEFINITIONS**

- (a) ~~The Definitions for "Criteria and Standards Applicable to Underground Storage Tanks" contained definitions in 15A NCAC 2N 02N .0203 are hereby incorporated by reference including subsequent amendments and editions, except that apply for the purposes of this Subchapter, except the definition of "Underground Storage Tank" shall be as defined in Subparagraph (b)(12) of this Rule.~~
- (b) The following terms are defined for use in this Subchapter:
- (1) "Annual operating fee" ~~is an means the~~ annual fee established in G.S. 143-215.94C that is required to be paid to the Department by the owner or operator of each commercial underground storage tank tank, as defined in G.S. 143-215.94A, in use on or after 1 January of the year, beginning with 1989. January 1, 1989.
  - (2) "Commission" means the Environmental Management Commission as organized under Chapter 143B of the General Statutes.
  - (3) "Department" means Department of Environment, Health, and Natural Resources. Environmental Quality.
  - (4) "Discovered release" means a release ~~which~~ that an owner or operator, or its employee or agent, has been made aware of, has been notified of, or has a reasonable basis for knowing has occurred.
  - (5) ~~"Dual usage tank" means an underground storage tank which could be considered both a commercial underground storage tank and a noncommercial underground storage tank and for which both the commercial and the noncommercial usages are integral to the operation or existence of the tank.~~

- (6) ~~"Household" means a permanent structure, whether freestanding or connected to other units, used primarily for living, where primary living space and primary food preparation facilities are controlled or maintained by the residents. "Household" includes single family houses, mobile homes, apartments, and single living units, whether or not the residents are related to each other and whether the units are occupied on a year round or seasonal basis. "Household" does not include dormitories, hospitals, hotels, motels, apartment buildings (as distinct from the individual apartments therein), or other multiple dwelling structures. The term "four or fewer households" shall relate to underground storage tanks serving households only.~~
- (5)(7) ~~"Landowner" means any record fee owner of real property that contains or contained a commercial underground storage tank of which he or she does not qualify as an owner or operator pursuant to G.S. 143-215.94A.~~
- (6) "Notice of Residual Petroleum" means the recordation of residual petroleum from underground storage tanks in accordance with G.S. 143B-279.11.
- (7)(8) ~~"Occurrence" means one or more release(s) that result(s) a release or releases resulting in a single plume of soil, soil contamination, surface water, water contamination, or groundwater contamination (consisting contamination, consisting of free product or dissolved contaminants exceeding standards specified in 15A NCAC 2L 02L and 15A NCAC 02T .1500 or any other applicable laws, rules or regulations) originating at a single property facility as defined by G.S. 143-215.94A(3a).~~
- (8)(9) "Reasonable and necessary expenditures" means expenditures for the cleanup assessment and remediation of environmental damage performed in accordance with applicable environmental laws and regulations and which laws, regulations, and rules that are essential in determining the extent of contamination, in conducting release response or remediation, or which compensate ~~third parties~~ third-parties for resulting bodily injury and property damage. The Commission shall consider such expenditures reasonable and necessary to the extent that they are supported by documentation, sufficiently documented, are performed in an efficient manner considering comparable costs for labor, equipment, and materials, and utilize cost-efficient methods.
- (9) "Reasonable Rate Document" means the schedule of costs that the Department has determined to be reasonable and necessary costs for specific tasks pursuant to G.S. 143-215.94E(e5)(3).

- (10) ~~"Substantive law, rule, or regulation" shall mean any law, rule, or regulation requiring an owner or operator to perform any act necessary and essential in preventing discharges or releases, in facilitating their early detection, and in mitigating the impact of discharges or releases.~~

(10)(11) ~~"Tank in operation" means an underground storage tank into which product is added or from which product is removed for purposes other than closure.~~

(11)(12) ~~"Tank in use" means an underground storage tank intended for the containment or dispensing of petroleum product.~~

(12)(13) ~~"Underground storage tank" as used in this Subchapter ank means any Commercial or Noncommercial Underground Storage Tank as defined in G.S. 143-215.94A. A dual usage tank is considered to be a commercial underground storage tank.~~

*Authority G.S. 143-215.3; 143-215.94A; 143-215.94B; 143-215.94C; 143-215.94D; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282.*

## SECTION .0300 - ANNUAL OPERATING FEES

### 15A NCAC 02P .0301 FEES AND PAYMENT

(a) The owner or operator of each commercial underground storage tank shall pay all annual ~~tank~~ operating fees due for that commercial underground storage tank tank, in accordance with G.S. 143-215.94C. Unpaid operating fees attach to the tanks, notwithstanding the ownership of the tanks.

(b) ~~The Division shall send an invoice, for the amount of the annual operating fees due, to the owner or operator of any commercial petroleum underground storage tank in use on January 1 of the year and which has been registered with the Department. The annual operating fee shall be due and payable 30 days following the date of the invoice and shall be submitted to the Division accordingly.~~

(c) ~~Any owner or operator not receiving an invoice for annual operating fees shall still pay any fees due according to the following schedule:~~

(1) ~~If the owner or operator has paid annual operating fees for the subject tank in previous years, the payment will be submitted to the Division within 30 days of the anniversary of the last invoicing date for the fees.~~

(2) ~~If the owner or operator has not previously paid annual operating fees for the subject tank, any annual operating fee is due on 1 January of that year and shall be submitted to the Division accordingly.~~

(d) ~~Any commercial underground storage tank (except commercial underground storage tanks not regulated under 15A NCAC 2N) which was in operation on or after December 22, 1988 and has not been permanently closed in accordance with 15A NCAC 2N .0800, is considered to be in use unless the provisions of G.S. 143215.94D(b)(4) are applicable.~~

~~(e) Any annual operating fee due on or after January 1, 1992, that is not paid within 30 days of the due date shall be subject to a late penalty of five dollars (\$5.00) per day up to an amount equal to the original fee. The late penalty will be assessed based on the date of receipt of fee payment by the Division.~~

~~(f) All annual operating fees due for any year are assessed in accordance with the schedule of fees in effect during that year. Payment of fees due for a prior year will be at the rate in effect during that prior year. It is the responsibility of the owner or operator to determine that all fees have been paid in accordance with Paragraph (a) of this Rule.~~

~~(g) In the event that an annual operating fee was paid for a tank for which a fee was not required, a refund of that fee payment may be requested by the owner or operator. A refund will be granted if the owner or operator provides adequate documentation that the tank was exempt from the requirement to pay the annual operating fee.~~

*Authority G.S. 143-215.3; 143-215.94C; 143-215.94D; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282.*

### **15A NCAC 02P .0302 NOTIFICATION**

Any person acquiring ownership of an existing commercial underground storage tank shall provide written notification to the ~~Division~~ Department of this action within 30 days of the date of transfer. This notification ~~must~~ shall indicate the following:

- (1) ~~Name~~ name and address of the previous owner and the new owner;
- (2) ~~Name,~~ name, identification number, and street address of the facility;
- (3) ~~Date~~ date of transfer;
- (4) ~~Signatures~~ signatures of the transferring owner and the new owner or their authorized ~~representatives;~~ representatives;
- (5) proof of placement of a Notice of Residual Petroleum for any known release at the site at the time of the transfer of the property;
- (6) statement of intent of whether the new owner intends to accept eligibility of any previous release from the tank or tanks just acquired; and
- (7) copy of ownership transfer documents.

*Authority G.S. 143-215.3; 143-215.94L; 143-215.94T; 143B-282.*

### **SECTION .0400 - REIMBURSEMENT PROCEDURE**

#### **15A NCAC 02P .0401 ELIGIBILITY OF OWNER OR OPERATOR**

(a) Date of Release.

- (1) ~~An owner or operator~~ owner, operator, or landowner of a commercial underground storage tank is not eligible for reimbursement of costs from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund related to releases which were discovered prior to June 30, 1988.
- (2) ~~An owner or operator of a noncommercial underground storage tank is eligible for reimbursement of costs without regard to the~~

~~date a release is discovered. In the case of multiple releases that commingle into one plume, the deductible is established under the first date of release.~~

(3) ~~An owner or operator of a commercial underground storage tank which qualifies for the Noncommercial Fund pursuant to G.S. 143-215.94D(b)(3) and 143-215.94D(b)(4) is eligible for reimbursement of costs without regard to the date a release is discovered. Only the currently approved eligible party, determined in accordance with Paragraphs (b) through (d) of this Rule, may be reimbursed from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.~~

(4) ~~An owner or operator or landowner of a commercial underground storage tank, from which a release is discovered on or after July 3, 1991, is not eligible for reimbursement from the Commercial Fund if the tank had been removed from the ground more than 120 days prior to the date of discovery of the release. After such time that the Department has notified the responsible party that no further action is required for a discharge or release pursuant to 15A NCAC 02L, eligibility may be reapplied for by either the current or former responsible party as applicable and upon receiving eligibility, said party shall be credited for all prior reimbursed amounts subject to G.S. 143-215.94E(j) and G.S. 143-215.94E(k).~~

(b) An owner or operator of a commercial underground storage tank is not eligible for reimbursement for costs related to releases if any annual operating fees due have not been paid in accordance with Rule .0301 of this Subchapter prior to ~~discovery.~~ discovery of a release from the tank. A previous owner or operator of a commercial underground storage tank may be eligible for reimbursement of costs for cleanup of a release discovered after he or she ceases owning or operating the underground storage tank if all fees due during his or her period of ownership and operation have been paid prior to discovery of the release. A landowner is eligible for reimbursement of costs without regard to the payment of ~~fees.~~ fees as long as the property has not been transferred to circumvent liability in accordance with this Paragraph.

(c) ~~An owner or operator~~ owner, operator, or landowner of a commercial ~~or noncommercial~~ underground storage tank is not eligible for reimbursement of any ~~expenditures~~ expended costs which are in excess of the amount determined reasonable in accordance with Rule ~~.0402,~~ .0402 of this Section and which are not necessary in performing cleanup of environmental damage and in compensating ~~third parties~~ third-parties for bodily injury and property damage, and ~~which that~~ which are less than any deductible established for the ~~appropriate fund.~~ Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund.

(d) ~~An owner or operator~~ owner, operator, or landowner of a commercial ~~or noncommercial~~ underground storage ~~tank~~ tank, who is eligible for reimbursement under the rules of this Section, may be reimbursed for eligible costs only after submittal of a written application of eligibility to the ~~Division;~~ Department, on

forms provided by the ~~Division, Department~~, which are located at 217 West Jones Street, Raleigh, NC 27603 and on the ~~Department's website~~, and which includes ~~any~~ information and documentation necessary to determine ~~eligibility and to determine that any expended costs are reasonable and necessary~~. eligibility. An application of eligibility shall include:

- (1) contact information for the applicant;
- (2) site information, including tenant information if applicable;
- (3) inventory of all tanks ever installed on the property;
- (4) release discovery and reporting information;
- (5) tank compliance history;
- (6) disclosure of the existence of environmental liability insurance or any other potential sources of funding information for the release;
- (7) scaled site map showing location of all tanks and releases;
- (8) tank upgrade information;
- (9) property deeds and bills of sale to confirm ownership history;
- (10) any UST Section inspection records; and
- (11) a notarized affidavit from the applicant.

(e) An owner or operator of a commercial ~~or noncommercial~~ underground storage tank shall not be eligible for reimbursement for costs related to releases if the owner or operator has willfully violated any substantive law, rule, or regulation applicable to underground storage tanks intended to prevent, mitigate, or facilitate the early detection of discharges or releases.

(f) The release response and corrective action requirements of any rules of the Commission and of any statute administered by the Department shall not ~~in any way~~ be construed as limited by, or contingent upon, any reimbursement from ~~either the Noncommercial Fund or the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund~~.

*Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94L; 143-215.94N; 143-215.94T.*

#### **15A NCAC 02P .0402 CLEANUP COSTS**

(a) In determining whether costs expended by an ~~owner or operator~~ owner, operator, or landowner are reasonable and necessary, the ~~Division~~ Department shall consider the following:

- (1) ~~Adequacy~~ adequacy and cost-effectiveness of any work performed, and technical activity utilized by the ~~owner or operator~~ owner, operator, or landowner in performing release response, site ~~assessment~~ assessment, and corrective ~~action~~ action;
- (2) ~~Typical billing~~ industry rates of engineering, geological, or other environmental consulting firms providing similar services in the State as determined by the ~~Division~~ Department;
- (3) ~~Typical rental~~ industry rental rates for any ~~necessary equipment~~ equipment, not to exceed the purchase price, as determined by the ~~Department~~ Division. ~~The mount reimbursed for equipment rental shall not exceed the typical purchase price of such equipment.~~

- (4) ~~Typical costs or~~ industry rates of any other ~~necessary service, labor labor, or expense as determined by the Division~~ expense; and
- (5) ~~Whether~~ whether costs expended for corrective action were required by 15A NCAC ~~2L~~ 02L.

(b) Expenditures not eligible for reimbursement shall include the following:

- (1) ~~Costs of the removal and disposal of noncommercial underground storage tanks and contents removed on or after July 3, 1991, and of commercial underground storage tanks and contents removed on or after January 1, 1992; costs that are not eligible to be reimbursed pursuant to G.S. 143-215.94B, and any costs associated with noncommercial underground storage tanks;~~
- (2) ~~Costs~~ costs of the replacement of any underground storage tank, piping, fitting, or ancillary ~~equipment~~ equipment required to operate and maintain a UST system;
- (3) ~~Costs~~ costs incurred in preparation of any proposals or bid by a provider of service for the purpose of soliciting or bidding for the opportunity to perform an environmental investigation or cleanup, even if that provider is ~~ultimately~~ selected to provide the service solicited;
- (4) ~~Interest on any accounts, loans, etc.;~~ interest of any kind;
- (5) ~~Expenses~~ expenses charged by the ~~owner or operator~~ owner, operator, or landowner in the processing and management of a reimbursement application or subsequent claims;
- (6) ~~Attorney's~~ attorney's fees;
- (7) ~~Penalties,~~ penalties, fees, and fines assessed by any court or agency;
- (8) ~~Loss~~ loss of profits, fees, and wages incurred by the ~~owner or operator~~ owner, operator, or landowner;
- (9) ~~Costs incurred during cleanup if preapproval of the cleanup tasks and associated costs was not obtained from the Division. Preapproval is not required for assessment activities or for costs determined by the Division to be related to emergency response actions; costs for which pre-approval is required as set forth in G.S. 143-215.94E(e5)(1) and (2), and was not obtained;~~
- (10) ~~Any~~ any other expenses not specifically related to environmental cleanup, or implementation of a ~~cost effective~~ cost-effective environmental cleanup, or ~~third-party~~ third-party bodily injury or property ~~damage~~ damage; and
- (11) for any task for which a maximum rate is established in the Reasonable Rate Document, costs in excess of that maximum rate shall not be eligible for reimbursement without prior written pre-approval by the Department.

(c) When preapproval of costs is required and is obtained from the Department, the preapproval is valid for one year from the date fully executed.

*Authority G.S. 143-215.3; 143-215.94B; 143-215.94D; 143-215.94E; 143-215.94L; 143-215.94T; 143-215.94V; 143B-282.*

#### **15A NCAC 02P .0403 ~~THIRD-PARTY~~ THIRD-PARTY CLAIMS**

(a) An owner or operator seeking reimbursement from the ~~appropriate fund~~ Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund for any ~~third-party~~ third-party claim for bodily injury or property damage ~~must~~ shall notify the ~~Division~~ Department of any such ~~claim~~ claim in accordance with G.S. 143-215.94E(e)(3). The owner or operator ~~must~~ shall provide the ~~Division~~ Department with all pleadings and other related documents ~~if of a third-party damage lawsuit that has been filed~~ filed prior to entry into settlement agreement or consent judgement for Departmental approval. The owner or operator shall provide to the ~~Division~~ Department copies of any medical reports, statements, investigative reports, or certifications from licensed professionals necessary to ~~determine~~ prove that a claim for bodily injury or property damage is reasonable and necessary.

(b) The term ~~third-party bodily injury~~ "third-party bodily injury" means specific physical bodily injury proximately resulting from exposure, explosion, or fire caused by the presence of a petroleum release and which is incurred by a person other than the owner or operator, or employees or agents of an owner or operator.

(c) The term ~~third-party property damage~~ "third-party property damage" means actual physical damage or damage due to specific loss of normal use of property owned by a person other than the owner or operator of an underground storage tank from which a release has occurred. A property owner shall not be considered a ~~third-party~~ third-party if the property was transferred by the owner or operator of an underground storage tank in anticipation of damage due to a release. ~~Third-party~~ Third-party property damage shall be reimbursed from the ~~appropriate fund~~ Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund based on the rental costs of comparable property during the period of loss of use up to a maximum amount equal to the fair market value. In the case of property that is ~~actually~~ destroyed as a result of a petroleum release, reimbursement shall be at an amount necessary to replace or repair the destroyed property.

*Authority G.S. 143-215.3; 143-215.94B; 143-215.94D; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282.*

#### **15A NCAC 02P .0404 REQUESTS FOR REIMBURSEMENT**

(a) After a determination of eligibility, the owner, operator, or landowner may make a request for reimbursement. An application A request for reimbursement must shall be made on a form forms located at 217 West Jones Street, Raleigh, NC 27603 or on the Department's website provided by the Division. Department only after the determination of eligibility has been issued. The application form must accompany the initial reimbursement request. request shall include the following:

- (1) notarized certification of the costs form;

- (2) notarized certification of payment to subcontractors form, if applicable;
- (3) summary of work performed form;
- (4) reimbursement payment information form;
- (5) certification of remediation system installation form, if applicable;
- (6) itemized breakdown of the requested reimbursement, primary and secondary claim forms; and
- (7) supporting documentation of the itemized costs, such as the following:
  - (A) subcontractor invoices;
  - (B) correspondence from regulatory agencies;
  - (C) invoices;
  - (D) bills of lading;
  - (E) per diem receipts;
  - (F) field logs; and
  - (G) reports.

(b) ~~A request for reimbursement shall include copies of any documentation required by the Division to determine that expended costs are reasonable and necessary. Proof of completion of work and payment must shall accompany any request for reimbursement, except when reimbursement will be is made jointly to the owner or operator owner, operator, or landowner and either a provider of service or a third-party third-party claimant. The Division may require the owner or operator or landowner to submit any information required for the purpose of substantiating any claim for reimbursement on forms provided by the Division.~~

(c) A request for reimbursement may be returned or additional information requested by the ~~Division~~ Department, if it is found to be incomplete.

(d) The ~~Division~~ Department shall reimburse an ~~owner or operator~~ eligible owner, operator, or landowner for expenses following completion of any ~~significant~~ phase of cleanup work or in accordance with the schedule allowed by G.S. 143-215.94E(e); 143-215.94E(e2).

(e) If any amount approved for reimbursement is less than the amount of reimbursement requested, the ~~Division~~ Department shall issue a written explanation of why the amount requested was not approved.

*Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94G; 143-215.94L; 143-215.94T; 143B-282.*

#### **15A NCAC 02P .0405 METHOD OF REIMBURSEMENT**

(a) Reimbursement for cleanup costs shall be made only to an ~~owner or operator~~ eligible owner, operator, or landowner of a petroleum underground storage tank, or jointly to an ~~owner or operator~~ owner, operator, or landowner and a provider of service.

(b) Reimbursement of cleanup costs to the ~~owner or operator~~ owner, operator, or landowner shall be made only after proof of completion of work and payment for such costs has been received by the ~~Division~~ Department.

(c) Joint reimbursement of cleanup costs shall be made to an ~~owner or operator~~ owner, operator, or landowner and a provider of service only upon receipt of a written agreement acknowledged



by both parties. Any reimbursement check shall be sent directly to the ~~owner or operator~~ owner, operator, or landowner.

(d) Payment of ~~third-party~~ third-party claims shall be made to the owner or operator, or jointly to the owner or operator and the ~~third party~~ third-party claimant.

(e) Any request for reimbursement that has not been returned to the owner, operator, or landowner, or reimbursed to the owner, operator, or landowner within 90 days of submittal of such a request may be considered by the owner, operator, or landowner as having been denied by the Department.

*Authority G.S. 143-215.3; 143-215.94B; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282.*

#### **15A NCAC 02P .0406 REIMBURSEMENT APPORTIONMENT**

(a) ~~Where multiple occurrences are addressed in a single cleanup action, expenses will be reimbursed based on apportionment among the occurrences. The method of apportionment will be as follows:~~

- (1) ~~Expenses related directly to a particular occurrence shall be applied only to that occurrence;~~
- (2) ~~Expenses that are related to more than one occurrence will be apportioned equally among the occurrences.~~

~~(a)(b)~~ If not all underground storage tanks contributing to an occurrence are eligible for reimbursement, reimbursement will shall be made at a rate equal to the number of tanks contributing to the occurrence which that are eligible for reimbursement divided by the total number of tanks contributing to the occurrence.

~~(b)(e)~~ If multiple underground storage tanks at a single property are contributing to a single occurrence and the tanks are owned or operated by different persons, reimbursement may be made to any of the owners or operators as if the occurrence were caused solely entirely by that person's underground storage tanks.

(c) If multiple storage tanks, either above ground or underground, at a single facility are contributing to a single occurrence, reimbursement shall be apportioned based upon the volume of eligible tanks divided by the total volume of all tanks contributing to the release.

(d) Where multiple occurrences are addressed in a single cleanup action, expenses shall be reimbursed based on apportionment among the occurrences. The method of apportionment shall be as follows:

- (1) expenses related to a particular occurrence shall be applied only to that occurrence; or
- (2) expenses that are related to more than one occurrence shall be apportioned on a pro rata basis among the occurrences.

*Authority G.S. 143-215.3; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282.*

#### **15A NCAC 02P .0407 FINAL ACTION APPEAL RIGHTS**

(a) The Director, ~~or his delegate,~~ Underground Storage Tank Section Chief, or Trust Fund Branch Head of the Division of

Waste Management shall make the agency decision on a written application for eligibility for reimbursement from the appropriate fund. Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund. The Director, or his delegate, Underground Storage Tank Section Chief, or Trust Fund Branch Head shall make the agency decision on any written request claim for reimbursement made subsequent to an initial application, once an applicant has been granted eligibility.

(b) ~~An owner or operator~~ owner, operator, or landowner who has ~~not received a written notification of decision been denied of~~ eligibility to or for reimbursement from the appropriate fund Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund within 90 days of after submittal of a written application in accordance with the ~~procedures~~ rules of this Subchapter, or who has had any written reimbursement request denied after submittal in accordance with the procedures of this Subchapter, shall be notified of the right to petition for a contested case in the Office of Administrative Hearings in accordance with the procedure set out in G.S. 150B-23. The Secretary of the Department of Environment, Health, and Natural Resources shall make the final agency decision in any contested case pursuant to G.S. 150B-36. Subchapter may elect to consider the application to have been denied and may file an appeal as provided in Article 3 of Chapter 150B of the General Statutes.

(c) An owner, operator, or landowner who has received a written notification of eligibility to or for reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund after submittal of a written application in accordance with the rules of this Subchapter and disagrees with the notification may elect to file an informal appeal supplying additional information. Following review of the additional information, the Director, Underground Storage Tank Section Chief, or Trust Fund Branch Head shall issue a written agency decision. If the written decision by the Director, Underground Storage Tank Section Chief, or Trust Fund Branch Head does not change the original decision of eligibility to or for reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund, the Department shall notify the owner, operator, or landowner of the right to petition for a contested case in the Office of Administrative Hearings in accordance with G.S. 150B-23.

(d) An owner, operator, or landowner who has received a written notification of eligibility to or for reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund after submittal of a written application in accordance with the rules of this Subchapter and disagrees with the notification may elect to file a petition for a contested case in the Office of Administrative Hearings in accordance with G.S. 150B-23 without providing any additional information.

*Authority G.S. 143-215.3; 143-215.94B; 143-215.94D; 143-215.94E; 143-215.94L; 143-215.94T; 143B-282; 150B-23; 150B-36.*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Marine Fisheries Commission intends to*

*readopt without substantive changes the rules cited as 15A NCAC 03Q .0101-.0109.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://deq.nc.gov/mfc-proposed-rules>

**Proposed Effective Date:**

*15A NCAC 03Q .0101, .0102, .0103, .0104, .0105, .0106, .0108, .0109 – September 1, 2022*

*15A NCAC 03Q .0107 – Automatically subject to legislative review, S.L. 2019-198*

**Public Hearing:**

**Date:** May 4, 2022

**Time:** 6:00 p.m.

**Location:** Webex Events meeting link:

<https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=e8cd072d4a64ebd5d402a3e3b38387adf>

*Event number: 2422 476 9859 Event password: 1234*

*Event phone number: 1-415-655-0003*

**Reason for Proposed Action:** *In accordance with G.S. 150B-21.3A, these nine joint rules that pertain to the classification of the waters of North Carolina as coastal fishing waters, inland fishing waters, and joint fishing waters are proposed for readoption by the N.C. Marine Fisheries Commission with no changes.*

**Comments may be submitted to:** *Catherine Blum, P.O. Box 769, Morehead City, NC 28557. Written comments may also be submitted via an online form available at <https://deq.nc.gov/mfc-proposed-rules>.*

**Comment period ends:** *June 17, 2022*

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

**Rule is automatically subject to legislative review:** *S.L. 2019-198: 15A NCAC 03Q .0107*

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☐ State funds affected  
☐ Local funds affected



**Substantial economic impact (>= \$1,000,000)**

**Approved by OSBM**

**No fiscal note required**

**CHAPTER 03 - MARINE FISHERIES**

**SUBCHAPTER 03Q - JURISDICTION OF AGENCIES:  
CLASSIFICATION OF WATERS**

**SECTION .0100 - GENERAL REGULATIONS: JOINT**

**15A NCAC 03Q .0101 SCOPE AND PURPOSE**

The rules in this Section pertain to the classification of the waters of North Carolina as coastal fishing waters, inland fishing waters and joint fishing waters. These rules are adopted jointly by the Marine Fisheries Commission and the Wildlife Resources Commission. In addition to the classification of the waters of the state these joint rules set forth guidelines to determine which fishing activities in joint waters are regulated by the Marine Fisheries Commission and which are regulated by the Wildlife Resources Commission. Finally, the joint rules set forth special fishing regulations applicable in joint waters that can be enforced by officers of the Division of Marine Fisheries and the Wildlife Resources Commission. These regulations do not affect the jurisdiction of the Marine Fisheries Commission and the Wildlife Resources Commission in any matters other than those specifically set out.

*Authority G.S. 113-132; 113-134; 143B-289.52.*

**15A NCAC 03Q .0102 INLAND FISHING WATERS**

Inland fishing waters are all inland waters except private ponds; and all waters connecting with or tributary to coastal sounds or the ocean extending inland from the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission. All waters which are tributary to inland fishing waters and which are not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are inland fishing waters. The regulation and licensing of fishing in inland fishing waters is under the jurisdiction of the Wildlife Resources Commission. Regulations and laws administered by the Wildlife Resources Commission regarding fishing in inland fishing waters are enforced by wildlife enforcement officers.

*Authority G.S. 113-132; 113-134; 143B-289.52.*

**15A NCAC 03Q .0103 COASTAL FISHING WATERS**

Coastal fishing waters are the Atlantic Ocean; the various coastal sounds; and estuarine waters up to the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission. All waters which are tributary to coastal fishing waters and which are not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are coastal fishing waters. The regulations and licensing of fishing in coastal fishing waters is under the jurisdiction of the Marine Fisheries Commission; except

that inland game fish (exclusive of spotted seatrout, weakfish, and striped bass) are subject to regulations by the Wildlife Resources Commission in coastal fishing waters. Regulations and laws administered by the Marine Fisheries Commission regarding fishing in coastal waters are enforced by fisheries enforcement officers. Regulations regarding inland game fish in coastal fishing waters are enforced by wildlife enforcement officers unless otherwise agreed to by the Wildlife Resources Commission.

*Authority G.S. 113-132; 113-134; 143B-289.52.*

**15A NCAC 03Q .0104 JOINT FISHING WATERS**

Joint fishing waters are those coastal fishing waters, hereinafter set out, denominated by agreement of the Marine Fisheries Commission and the Wildlife Resources Commission pursuant to G.S. 113-132(e) as joint fishing waters. All waters which are tributary to joint fishing waters and which are not otherwise designated by agreement between the Marine Fisheries Commission and the Wildlife Resources Commission are classified as joint fishing waters. The regulation and licensing of fishing in joint waters shall be as stated in 15A NCAC 3Q .0106.

*Authority G.S. 113-132; 113-134; 143B-289.52.*

**15A NCAC 03Q .0105 POSTING DIVIDING LINES**

The dividing lines of all major bodies of water and watercourses which are divided by the agreement of the Marine Fisheries Commission and the Wildlife Resources Commission so that portions of the same are constituted inland fishing waters, coastal fishing waters, or joint fishing waters shall be marked with signs in so far as may be practicable. Unmarked and undesignated tributaries shall have the same classification as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the classification of any body of water or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the applicability of any regulation pertaining to any such body of water or portion thereof.

*Authority G.S. 113-132; 113-134; 143B-289.52.*

**15A NCAC 03Q .0106 APPLICABILITY OF RULES: JOINT WATERS**

(a) All coastal fishing laws and regulations administered by the Department of Environment and Natural Resources and the Marine Fisheries Commission apply to joint waters except as otherwise provided, and shall be enforced by fisheries enforcement officers.

(b) The following inland fishing laws and regulations administered by the Wildlife Resources Commission apply to joint waters and shall be enforced by wildlife enforcement officers:

- (1) all laws and regulations pertaining to inland game fishes,
- (2) all laws and regulations pertaining to inland fishing license requirements for hook and line fishing,

- (3) all laws and regulations pertaining to hook and line fishing except as hereinafter provided.

*Authority G.S. 113-132; 113-134; 143B-289.52.*

**15A NCAC 03Q .0107 SPECIAL REGULATIONS: JOINT WATERS**

In order to effectively manage all fisheries resources in joint waters and in order to confer enforcement powers on both fisheries enforcement officers and wildlife enforcement officers with respect to certain rules, the Marine Fisheries Commission and the Wildlife Resources Commission deem it necessary to adopt special rules for joint waters. Such rules supersede any inconsistent rules of the Marine Fisheries Commission or the Wildlife Resources Commission that would otherwise be applicable in joint waters under the provisions of 15A NCAC 03Q .0106:

- (1) Striped Bass
  - (a) It is unlawful to possess any striped bass or striped bass hybrid that is less than 18 inches long (total length).
  - (b) It is unlawful to possess striped bass or striped bass hybrids between the lengths of 22 and 27 inches (total length) in joint fishing waters of the Central Southern Management Area as designated in 15A NCAC 03R .0201.
  - (c) It is unlawful to possess striped bass or striped bass hybrids May through September in the joint fishing waters of the Central Southern Management Area and the Albemarle Sound Management Area.
  - (d) It is unlawful to possess striped bass or striped bass hybrids taken from the joint fishing waters of the Cape Fear River.
  - (e) It is unlawful to possess more than one daily creel limit of striped bass or striped bass hybrids, in the aggregate, per person per day, regardless of the number of management areas fished.
  - (f) Possession of fish shall be assessed for the creel and size limits of the management area in which the individual is found to be fishing, regardless of the size or creel limits for other management areas visited by that individual in a given day.
  - (g) It is unlawful to engage in net fishing for striped bass or striped bass hybrids in joint waters except as authorized by rules of the Marine Fisheries Commission.
- (2) Lake Mattamuskeet:
  - (a) It is unlawful to set or attempt to set any gill net in Lake Mattamuskeet canals designated as joint waters.

- (b) It is unlawful to use or attempt to use any trawl net or seines in Lake Mattamuskeet canals designated as joint waters.
- (3) Cape Fear River. It is unlawful to use or attempt to use any net, net stakes or electrical fishing device within 800 feet of the dam at Lock No.1 on the Cape Fear River.
- (4) Shad: It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook-and-line.

*Authority G.S. 113-132; 113-134; 143B-289.52.*

**15A NCAC 03Q .0108 MANAGEMENT RESPONSIBILITY FOR ESTUARINE STRIPED BASS IN JOINT WATERS**

(a) The management areas for estuarine striped bass fisheries in coastal North Carolina are designated in 15A NCAC 03R .0201.

(b) In order to effectively manage the recreational hook and line harvest in joint waters of the Albemarle Sound-Roanoke River stock of striped bass, the Marine Fisheries Commission and the Wildlife Resources Commission deem it necessary to establish two management areas; the Albemarle Sound Management Area and the Roanoke River Management Area as designated in 15A NCAC 03R .0201. The Wildlife Resources Commission shall have principal management responsibility for the stock when it is in the joint and inland fishing waters of the Roanoke River Management Area. The Marine Fisheries Commission shall have principal management responsibility for the stock in the coastal, joint and inland waters of the Albemarle Sound Management Area. The annual quota for recreational harvest of the Albemarle-Roanoke striped bass stock shall be divided equally between the two management areas. Each commission shall implement management actions for recreational harvest within their respective management areas that will be consistent with the North Carolina Estuarine Striped Bass Fishery Management Plan.

*Authority G.S. 113-132; 113-134; 143B-289.52.*

**15A NCAC 03Q .0109 IMPLEMENTATION OF ESTUARINE STRIPED BASS MANAGEMENT PLANS: RECREATIONAL FISHING**

The Marine Fisheries and Wildlife Resources Commissions shall implement their respective striped bass management actions for recreational fishing pursuant to their respective rule-making powers. To preserve jurisdictional authority of each Commission, the following means are established through which management measures can be implemented by a single instrument in the following management areas:

- (1) In the Roanoke River Management Area, the exclusive authority to open and close seasons and areas, and establish size and creel limits whether inland or joint fishing waters shall be vested in the Wildlife Resources Commission. An instrument closing any management area in joint waters shall operate as and shall be a jointly issued instrument opening or closing

seasons or areas to harvest in the Roanoke River management area.

- (2) In the Albemarle Sound Management Area, the exclusive authority to open and close seasons and areas and establish size and creel limits, whether coastal or joint fishing waters shall be vested in the Marine Fisheries Commission. The season shall close by proclamation if the quota is about to be exceeded. In the Albemarle Sound Management Area administered by the Marine Fisheries Commission, a proclamation affecting the harvest in joint and coastal waters, excluding the Roanoke River Management Area, shall automatically be implemented and effective as a Wildlife Resources Commission action in the inland waters and tributaries to the waters affected.

*Authority G.S. 113-132; 113-134; 113-182; 143B-289.52.*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .0304, .0306, .0309, and .0310.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules/proposed-rules>

**Proposed Effective Date:** August 1, 2022

**Public Hearing:**

**Date:** May 3, 2022

**Time:** 11:00 a.m.

**Location:** Brunswick County Government Center  
 30 Government Center Drive  
 Bolivia, NC 28422  
 Commission Chambers

**Date:** May 3, 2022

**Time:** 2:30 p.m.

**Location:** New Hanover County Public Library  
 1241 Military Cutoff Road  
 Wilmington, NC 28405

**Date:** May 9, 2022

**Time:** 3:00 p.m.

**Location:** Division of Coastal Management  
 400 Commerce Avenue  
 Morehead City, NC 28557  
 Upstairs Conference Room

**Date:** May 10, 2022

**Time:** 10:00 a.m.

**Location:** Onslow County Public Library  
 1330 NC Hwy 210  
 Sneads Ferry, NC 28460  
 Room #105

**Date:** May 10, 2022

**Time:** 2:00 p.m.

**Location:** Surf City Town Hall  
214 W. Florence Way  
Hampstead, NC 28443  
Council Chambers

**Reason for Proposed Action:** *The Coastal Resources Commission is proposing amendments to reference the update of the Inlet Hazard Area boundaries and associated development setback factors. The proposed amendments are in the public interest as they are intended to minimize the loss of property and human life by establishing development setbacks between structures and the Atlantic shoreline.*

**Comments may be submitted to:** Braxton Davis, 400 Commerce Avenue, Morehead City, NC 28557

**Comment period ends:** June 17, 2022

**Procedure for Subjecting a Proposed Rule to Legislative**

**Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☐ State funds affected
- ☒ Local funds affected
- ☐ Substantial economic impact ( $\geq \$1,000,000$ )
- ☒ Approved by OSBM
- ☐ No fiscal note required

**CHAPTER 07 - COASTAL MANAGEMENT**

**SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN**

**SECTION .0300 - OCEAN HAZARD AREAS**

**15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS**

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this

area is the mean low water line. The landward extent of this area is the distance landward from the ~~first line of stable and natural vegetation line~~ as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times 90; ~~provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 180 feet landward from the first line of stable and natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. 90.~~ The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "North Carolina 2019 Oceanfront Setback Factors & Long-Term Average Annual Erosion Rate Update Study" and approved by the Coastal Resources Commission on February 28, 2019 (except as such rates may be varied in individual contested cases or in declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at <http://www.nccoastalmanagement.net>.

- (2) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding, and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the mean low water line a distance encompassing that area within which the inlet migrates, based on statistical analysis, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet, and external influences such as jetties, terminal groins, and channelization. ~~The areas on the maps identified as Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway "Inlet Hazard Area Boundary, 2019 Update: Science Panel Recommendations to the North Carolina Coastal Resources Commission" are incorporated by reference and are hereby designated as Inlet Hazard Areas, except for: Areas,~~

- (a) the location of a former inlet which has been closed for at least 15 years;
- (b) inlets that due to shoreline migration, no longer include the current location of the inlet; and

- (e) ~~inlets providing access to a State Port via a channel maintained by the United States Army Corps of Engineers.~~

~~In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible area. This~~ The report is and maps are available for inspection at the Department of Environmental Quality, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Item (1) of this Rule.

- (3) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable and natural vegetation is present may be designated as Unvegetated Beach Areas on either a permanent or temporary basis as follows:

- (a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change due to wind and wave action. The areas in this category shall be designated following studies by the Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at the website referenced in Item (1) of this Rule.

- (b) An area that is unvegetated as a result of a hurricane or other major storm event may be designated by the Coastal Resources Commission as an Unvegetated Beach Area for a specific period of time, or until the vegetation has re-established in accordance with 15A NCAC 07H .0305(a)(5). At the expiration of the time specified or the re-establishment of the vegetation, the area shall return to its pre-storm designation.

- (c) The Commission designates as temporary unvegetated beach areas those oceanfront areas of:

- (i) Surf City and North Topsail Beach in which the vegetation line as shown on the United States National Oceanic and Atmospheric Administration imagery dated September 17, 2018 was destroyed as a result of Hurricane Florence in September 2018; and

- (ii) Oak Island in which the vegetation line as shown on the United States National Oceanic and Atmospheric Administration and Geological Survey imagery dated August 4, 2020 was destroyed as a result of Hurricane Isaias in August 2020.

The designation AEC boundaries can be found on the Division's website at [https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unvegetated\\_beach\\_aec.pdf](https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unvegetated_beach_aec.pdf) and [https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unveg\\_beachAEC\\_Oak\\_Island.zip](https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unveg_beachAEC_Oak_Island.zip). This designation shall continue until such time as the stable and natural vegetation has reestablished, or until the area is permanently designated as an unvegetated beach area pursuant to Sub-Item (3)(a) of this Rule.

- (4) State Ports Inlet Management Area. These are areas adjacent to and within Beaufort Inlet and the mouth of the Cape Fear River, providing access to a State Port via a channel maintained by the United States Army Corps of Engineers. These areas are unique due to the influence of federally-maintained channels, and the critical nature of maintaining shipping access to North Carolina's State Ports. These areas may require specific management strategies not warranted at other inlets to address erosion and shoreline stabilization. State Ports Inlet Management Areas shall extend from the mean low water line landward as designated on maps approved by the Coastal Resources Commission and available without cost from the Division of Coastal Management, and on the internet at the website [https://files.nc.gov/ncdeq/Coastal%20Management/GIS/state\\_port\\_aec.pdf](https://files.nc.gov/ncdeq/Coastal%20Management/GIS/state_port_aec.pdf).

*Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124.*

#### **15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS**

- (a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's rules shall be located according to whichever of the following is applicable:

- (1) The ~~ocean hazard~~ Ocean Hazard Area setback for development shall be measured in a landward direction from the vegetation line, the ~~state~~ pre-project vegetation line, or the measurement line, whichever is applicable.

- (2) ~~In areas with a development line, the ocean hazard setback shall be set in accordance with Subparagraphs (a)(3) through (9) of this Rule. With the exception of those types of development defined in 15A NCAC 07J .1301(d), in no case shall new development be sited seaward of the development line. In areas with a Static Line Exception approved in accordance with 15A NCAC 07J .1200 and a Development Line approved in accordance with 15A NCAC 07J .1300, the petitioner shall notify the Division of Coastal Management which one of the two approaches will be utilized and applied to the entire large scale project area as defined in 15A NCAC 07H .0305(a)(7).~~
- (3) ~~In no case shall a development line be created or established on State owned lands or oceanward of the mean high water line or perpetual property easement line, whichever is more restrictive.~~
- (4)(2) The ocean hazard setback shall be determined by both the size of development and the shoreline long term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:
- (A) The total square footage of heated or air-conditioned living space;
  - (B) The total square footage of parking elevated above ground level; and
  - (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.
- Decks, roof-covered porches, and walkways shall not be included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.
- (5)(3) With the exception of those types of development defined in ~~15A NCAC 07H .0309~~, 15A NCAC 07H .0309(a), no development, including any portion of a building or structure, shall extend oceanward of the ~~ocean hazard~~ Ocean Hazard Area setback. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback shall be established based on the following criteria:
- (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
  - (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
  - (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
  - (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
  - (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
  - (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
  - (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;
  - (H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
  - (I) Infrastructure that is linear in nature, such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water, and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
  - (J) Parking lots greater than or equal to 5,000 square feet require a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
  - (K) Notwithstanding any other setback requirement of this Subparagraph, a

- construction of a new building or other structure greater than or equal to 5,000 square feet in a community with a an unexpired static line exception or Beach Management Plan approved by the Commission in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either ~~the static vegetation line~~, the vegetation line, line or measurement line, whichever is farthest landward; and
- (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of ~~single family or duplex residential structures with a total floor area greater than 5,000 square feet, and commercial and multi family residential structures a~~ structure with a total floor area no greater than 10,000 square feet, feet shall be allowed provided that the structure meets the following criteria:
- (i) the structure is in a community with an unexpired static line exception, Beach Management Plan approved by the Commission, or was originally constructed prior to August 11, 2009;
  - (ii) the structure as replaced does not exceed the original footprint or square footage;
  - (iii) it is not possible for the structure to be rebuilt in a location that meets the ~~ocean hazard~~ Ocean Hazard Area setback criteria required under Subparagraph (a)(5) of this Rule;
  - (iv) the structure as replaced meets the minimum setback required under Part (a)(5)(A) of this Rule; a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater; and
  - (v) the structure is rebuilt as far landward on the lot as feasible.
- (6)(4) If a primary dune exists in the ~~AEC~~ AEC, on or landward of the lot where the development is proposed, the development shall be landward of the applicable ocean hazard setback and the crest of the primary dune, the ocean hazard
- ~~setback, or development line, whichever is farthest from vegetation line, static vegetation line, or measurement line, whichever is applicable.~~ Dune. For existing lots, ~~however, lots~~ where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback, ~~but~~ and shall not be located on or oceanward of a frontal ~~dune or the development line.~~ The words dune. For the purposes of this Rule, "existing lots" ~~in this Rule~~ shall mean a lot or tract of land that, as of June 1, 1979, is specifically described in a recorded plat and cannot be enlarged by combining the lot or tract of land with a contiguous lot or tract of land under the same ownership.
- (7)(5) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot where the development is proposed, the development shall be set landward of the frontal ~~dune, ocean hazard dune or Ocean Hazard Area~~ setback, ~~or development line,~~ whichever is farthest from the vegetation line, ~~static pre-project~~ vegetation line, or measurement line, whichever is applicable.
- (8) ~~If neither a primary nor frontal dune exists in the AEC on or landward of the lot where development is proposed, the structure shall be landward of the Ocean Hazard Area setback or development line, whichever is more restrictive.~~
- (9)(6) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be ~~cosmetically, but shall not be structurally,~~ cosmetically but not be structurally attached to an existing structure that does not conform with current setback requirements.
- (10)(7) Established common law and statutory public rights of access to and use of public trust lands and waters in ~~ocean hazard areas~~ Ocean Hazard Area shall not be eliminated or ~~restricted,~~ restricted, nor shall such development increase the risk of damage to public trust areas. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.
- (11)(8) Development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the ~~static pre-project~~ vegetation line as defined in this Section, unless ~~a development line an unexpired static line exception or Beach~~



Management Plan approved by the Commission has been approved for the local jurisdiction by the Coastal Resources Commission in accordance with ~~15A NCAC 07J .1300.~~ 15A NCAC 07J .1200.

(12)(9) ~~In order to allow for development landward of the large scale beach fill project that cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraphs (a)(1) and (a)(5) of this Rule, a local government, group of local governments involved in a regional beach fill project, or qualified "owners' association" as defined in G.S. 47F-1-103(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at least one mile of ocean shoreline, may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200. The static line exception shall apply to development of property that lies both within the jurisdictional boundary of the petitioner and the boundaries of the large scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(5)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner, and the boundaries of the large scale beach fill project. approval of a Beach Management Plan in accordance with 15A NCAC 07J .1200. If the request for a Beach Management Plan is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static pre-project vegetation line under the following conditions:~~

- (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and ~~(a)(5)~~(a)(3) of this Rule;
- (B) Development setbacks shall be calculated from the shoreline erosion rate in place at the time of permit issuance;
- (C) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent habitable building or structure. The alignment shall be measured from the most oceanward point of the adjacent building or structure's roof line, including roofed

decks, if applicable. An "adjacent" property is one that shares a boundary line with the site of the proposed development. When no adjacent buildings or structures exist, or the configuration of a lot, street, or precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case by case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater; Director of the Division of Coastal Management based on an approximation of the average seaward-most positions of the rooflines of adjacent structures along the same shoreline extending 500 feet in either direction. If no structures exist within this distance, the proposed structure must meet the applicable setback from the Vegetation Line but will not be held to the landward-most adjacent structure or an average line of structures.

(D) With the exception of swimming pools, the ~~development exceptions defined in Rule .0309(a) of this Section shall be allowed oceanward of the static vegetation line; and of the pre-project vegetation line.~~

(E) ~~Development shall not be eligible for the exception defined in Rule .0309(b) of this Section.~~

~~(b) No development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon that would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes shall be allowed only to the extent permitted by 15A NCAC 07H .0308(b).~~

~~(e)(b)~~ Development shall not cause irreversible damage to historic architectural or archaeological resources as documented by the local historic commission, the North Carolina Department of Natural and Cultural Resources, or the National Historical Registry.

~~(d) Development shall comply with minimum lot size and setback requirements established by local regulations.~~

~~(e)(c)~~ Mobile homes shall not be placed within the high hazard flood area Ocean Hazard Area unless they are within mobile home parks existing as of June 1, 1979.

~~(f) Development shall comply with the general management objective for ocean hazard areas set forth in 15A NCAC 07H .0303.~~

~~(g)~~ Development shall not interfere with legal access to, or use of, public resources, nor shall such development increase the risk of damage to public trust areas.

~~(h)(d)~~ Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that:

- (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
- (2) restore the affected environment; or
- (3) compensate for the adverse impacts by replacing or providing substitute resources.

~~(i)(e)~~ Prior to the issuance of any permit for development in the ~~ocean hazard AECs, Ocean Hazard Area~~, there shall be a written acknowledgment from the applicant to the Division of Coastal Management that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. The acknowledgement shall state that the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

~~(j)(f)~~ ~~All~~ The relocation or elevation of structures shall require permit approval. ~~Structures relocated with public funds shall comply with the applicable setback line and other applicable AEC rules. Structures, including septic tanks and other essential accessories, relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the present location. Septic tanks shall not be located oceanward of the primary structure. All relocation of structures shall meet all other applicable local and state rules.~~

- (1) Structures relocated landward with public funds shall comply with the applicable ocean hazard setbacks and other applicable AEC rules.
- (2) Structures relocated landward entirely with non-public funds that do not meet current applicable ocean hazard setbacks may be relocated the maximum feasible distance landward of its present location. Septic tanks shall not be relocated oceanward of the primary structure.
- (3) Existing structures shall not be elevated if any portion of the structure is located seaward of the vegetation line.

~~(k)(g)~~ Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any such structure shall be relocated or dismantled within ~~two~~ eight years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach fill takes place within ~~two~~ eight years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or ~~dismantled at that time.~~ dismantled. This permit condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed pursuant to 15A NCAC 07H .0308(a)(2).

Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

## **15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS**

(a) The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:

- (1) campsites;
- (2) driveways and parking areas with clay, packed sand, or gravel;
- (3) elevated decks not exceeding a footprint of 500 square ~~feet; feet.~~ Existing decks exceeding a footprint of 500 square feet may be replaced with no enlargement beyond their original dimensions;
- (4) beach accessways consistent with Rule .0308(c) of this Section;
- (5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
- (6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
- (7) temporary amusement stands consistent with Section .1900 of this Subchapter;
- (8) sand fences; ~~and~~
- (9) swimming ~~pools.~~ pools; and
- (10) fill not associated with dune creation that is obtained from an upland source and is of the same general characteristics as the sand in the area in which it is to be placed.

In all cases, this development shall be permitted only if it is landward of the vegetation line or ~~static pre-project~~ static pre-project vegetation line, whichever is applicable; involves no alteration or removal of primary or frontal dunes which would compromise the integrity of the dune as a protective landform or the dune vegetation; ~~has overwalks to protect any existing dunes;~~ is not essential to the continued existence or use of an associated principal development; ~~is not required to satisfy minimum requirements of local zoning, subdivision or health regulations;~~ and meets all other non-setback requirements of this Subchapter.

(b) Where application of the oceanfront setback requirements of Rule .0306(a) of this Section would preclude placement of ~~permanent substantial structures on lots~~ a structure on a lot existing as of June 1, 1979, ~~buildings the structure shall be permitted seaward of the applicable setback line in ocean erodible areas and Ocean Erodible Areas, State Ports Inlet Management Areas, and Inlet Hazard Areas, but not inlet hazard areas or unvegetated beach areas.~~ Unvegetated Beach Areas, if each of the following conditions are met:

- (1) The development is set back from the ocean the maximum feasible distance possible on the existing lot and the development is designed to minimize encroachment into the setback area;
- (2) The development is at least 60 feet landward of the vegetation ~~line or static vegetation line,~~ line, measurement line, or pre-project vegetation line whichever is applicable;

- (3) The development is not located on or ~~in front~~ oceanward of a frontal dune, but is entirely behind the landward toe of the frontal dune;
- (4) The development incorporates each of the following design standards, which are in addition to those required by Rule .0308(d) of this Section.
  - (A) All pilings shall have a tip penetration that extends to at least four feet below mean sea level;
  - (B) The footprint of the structure shall be no more than 1,000 square feet, and the total floor area of the structure shall be no more than 2,000 square feet. For the purpose of this Section, roof-covered decks and porches that are structurally attached shall be included in the calculation of footprint;
  - (C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in those cases where the development does not abut the ocean and is located landward of a paved public street or highway currently in use. In those ~~cases concrete, asphalt, or turfstone may also be used;~~ cases, other material may be used.
  - (D) No portion of a building's total floor area, including elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, may extend oceanward of the total floor area of the landward-most ~~adjacent building.~~ habitable building or structure. The alignment shall be measured from the most oceanward point of the adjacent building or structure's roof line, including roofed decks, if applicable. An "adjacent" property is one that shares a boundary line with the site of the proposed development. When no adjacent building or structure exists, or the geometry or orientation of a lot or shoreline precludes the placement of a building in line with the landward most adjacent structure of similar use, an average line of construction shall be determined by the Division of Coastal Management on a case by case basis in order to determine an only by the Director of the Division of Coastal Management based on an approximation of the average seaward-most positions of the rooflines of adjacent structures along the same shoreline, extending 500 feet in either direction. If no structures exist within this distance, the proposed structure shall meet the applicable setback from the Vegetation Line but shall not be held to the landward-most adjacent structure or an average line of structures. The ocean hazard setback that is shall extend landward of the vegetation line, static vegetation line or measurement line, whichever is applicable, a distance no less than 60 feet.
- (5) All other provisions of this Subchapter and other state and local regulations are met. If the development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such a system shall be submitted as part of the CAMA permit application.
- (c) The following types of water dependent development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:
  - (1) piers providing public access; and
  - (2) maintenance and replacement of existing state-owned bridges, and causeways and accessways to such bridges.
- (d) Replacement or construction of a pier house associated with an ocean pier shall be permitted if each of the following conditions is met:
  - (1) The ocean pier provides public access for fishing and other recreational purposes whether on a commercial, public, or nonprofit basis;
  - (2) Commercial, non-water dependent uses of the ocean pier and associated pier house shall be limited to restaurants and retail services. Residential uses, lodging, and parking areas shall be prohibited;
  - (3) The pier house shall be limited to a maximum of two stories;
  - (4) A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of mean high water;
  - (5) A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of 5,000 square feet, whichever is larger;
  - (6) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and
  - (7) If the pier has been destroyed or rendered unusable, replacement or expansion of the associated pier house shall be permitted only if the pier is being replaced and returned to its original function.
- (e) In addition to the development authorized under Paragraph (d) of this Rule, small scale, non-essential development that does not induce further growth in the Ocean Hazard Area, such as the construction of single family piers and small scale erosion control measures that do not interfere with natural oceanfront processes, shall be permitted ~~on those non-oceanfront~~ in the Ocean Hazard Area along those portions of shoreline that exhibit features

characteristic of an Estuarine Shoreline. Such features include the presence of wetland vegetation, and lower wave energy and erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100, .1200 and 15A NCAC 07K .0203.

(f) Transmission lines necessary to transmit electricity from an offshore energy-producing facility may be permitted provided that each of the following conditions is met:

- (1) The transmission lines are buried under the ocean beach, nearshore area, and primary and frontal dunes, all as defined in Rule .0305 of this Section, in such a manner so as to ensure that the placement of the transmission lines involves no alteration or removal of the primary or frontal dunes; and
- (2) The design and placement of the transmission lines shall be performed in a manner so as not to endanger the public or the public's use of the beach.

(g) Existing stormwater outfalls as of the last amended date of this rule within the Ocean Hazard AEC that are owned or maintained by a State agency or local government, may be extended oceanward subject to the provisions contained within 15A NCAC 07J .0200. Outfalls may be extended below mean low water and may be maintained in accordance with 15A NCAC 07K .0103. Shortening or lengthening of outfall structures within the authorized dimensions, in response to changes in beach width, is considered maintenance under 15A NCAC 07K .0103. Outfall extensions may be marked with signage and shall not prevent pedestrian or vehicular access along the beach. This Paragraph does not apply to existing stormwater outfalls that are not owned or maintained by a State agency or local government.

*Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a; 113A-113(b)(6)b; 113A-113(b)(6)d; 113A-124.*

#### **15A NCAC 07H .0310 USE STANDARDS FOR INLET HAZARD AREAS**

(a) Inlet Hazard Areas of Environmental Concern as defined by Rule .0304 of this Section are subject to inlet migration, rapid and severe changes in watercourses, flooding and strong tides. Due to this extremely hazardous nature of the Inlet Hazard Areas, all development within these areas shall be permitted in accordance with the following standards:

- (1) ~~All development in the inlet hazard area shall be set back from the first line of stable natural vegetation a distance equal to the setback required in the adjacent ocean hazard area; The~~ Inlet Hazard Area setback for development shall be measured in a landward direction from the vegetation line, the pre-project vegetation line, or the measurement line, whichever is applicable in accordance with 15A NCAC 07H .0306;
- (2) Inlet Hazard Area setback factors are based on the long-term average annual shoreline change rates calculated using methods detailed in the

report entitled "Inlet Hazard Area Boundary, 2019 Update: Science Panel Recommendations to the North Carolina Coastal Resources Commission," and are depicted on maps entitled "2019 Inlet Setback Factors", approved by the Coastal Resources Commission on February 28, 2019. Inlet Hazard Area setback factors shall be no less than two where accretion is measured, or erosion rates are less than two feet per year.

- (3) All development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's rules shall be located in accordance with 15A NCAC 07H .0306.
- (2)(4) ~~Permanent structures shall be permitted at a density of no more than one commercial or residential unit structure per 15,000 square feet of land area on lots subdivided or created after July 23, 1981; August 1, 2022.~~
- (3)(5) ~~Only residential structures of four units or less or non-residential structures of less than 5,000 square feet total floor area shall be allowed within the inlet hazard area. New structures within an Inlet Hazard Area shall not exceed 5,000 square feet total floor area in accordance with 15A NCAC 07H .0306(a)(4), except that access roads to those areas and maintenance and replacement of existing bridges shall be allowed;~~
- (4)(6) ~~Established common-law and statutory public rights of access to the public trust lands and waters in Inlet Hazard Areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways;~~
- (5)(7) ~~All other rules in this Subchapter pertaining to development in the ocean hazard areas~~ Ocean Hazard Areas shall be applied to development within the Inlet Hazard Areas.
- (8) Notwithstanding any other setback requirement of this Subparagraph, replacement of structures with a total floor area no greater than 10,000 square feet, shall be allowed provided that the structure meets the following criteria:
  - (A) the structure was originally constructed prior to August 1, 2022;
  - (B) the structure as replaced does not exceed the original footprint or square footage;
  - (C) it is not possible for the structure to be rebuilt in a location that meets the Ocean Hazard Area setback criteria required under 15A NCAC 07H .0306 of this Rule;
  - (D) the structure as replaced meets the minimum setback required under 15A NCAC 07H .0306(a)(5); and

(E) the structure is rebuilt as far landward on the lot as feasible.

(b) The ~~inlet hazard area~~ Inlet Hazard Area setback requirements shall not apply to the types of development exempted from the ocean setback rules in 15A NCAC 07H .0309(a), nor, to the types of development listed in 15A NCAC 07H .0309(c).

(c) In addition to the types of development excepted under Rule .0309 of this Section, ~~small-scale~~ small-scale development that does not induce further growth in the Inlet Hazard Area, such as the construction of single-family piers and ~~small-scale~~ small-scale erosion control measures that do not interfere with natural inlet movement, may be permitted on those portions of shoreline within a designated Inlet Hazard Area that exhibit features characteristic of Estuarine Shoreline. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, ~~small-scale~~ small-scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100, .1200 and 07K .0203.

*History Note:*

*Authority G.S. 113A-107; 113A-113(b); 113A-124;*

*Eff. December 1, 1981;*

*Emergency Rule Eff. September 11, 1981, for a period of 120 days to expire on January 8, 1982;*

*Temporary Amendment Eff. October 30, 1981, for a period of 70 days to expire on January 8, 1982;*

*Amended Eff. April 1, 1999; April 1, 1996; December 1, 1992; December 1, 1991; March 1, 1988;*

*Readopted Eff. December 1, 2020;*

*Amended Eff. August 1, 2022.*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 13B .0533, .0535, .0543-.0545, .1603, .1617, .1627, and .1631-.1637.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules/proposed-rules>

**Proposed Effective Date:** *Delayed effective date*

**Public Hearing:**

**Date:** *May 3, 2022*

**Time:** *4:00 p.m.*

**Location:**

*A virtual public hearing will be held by webinar as follows:*

*WebEx Event Meeting Link:*

*<https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=e564887a9de18ce458c47274c8ad4c616>*

*Event number: 2444 616 7363*

*Event password: 1234*

*To join by phone: Call +1-415-655-0003 US TOLL, enter access code 2444 616 7363*

*If you wish to attend the hearing, you must register before 5:00 p.m. on Monday, May 2, 2022. The registration form can be found at the following link: <https://forms.office.com/g/Gf9zLui0yw>*

**Reason for Proposed Action:** *S.L. 2021-153 required that these rules be amended to be substantively identical to the implementation in Section 1.(c) of the Session Law. S.L. 2021-153 implemented the changes directly, and the implementation remains in effect until the rule amendments are effective. The amendments reduce the documentation required to be submitted in permit applications for construction and demolition landfills and municipal solid waste landfills, for closure permits and for a change in ownership or corporate structure. Also, the term "interim maximum allowable concentrations (IMACs)" is proposed to be removed from Rules .0544, .0545, and .1631 -.1637.*

**Comments may be submitted to:**

*Deb Aja, 1646 Mail Service Center, Raleigh, NC 27699-1646; email [dwm.publiccomments@ncdenr.gov](mailto:dwm.publiccomments@ncdenr.gov)*

**Comment period ends:** *June 17, 2022*

**Rules are automatically subject to legislative review.** *See S.L. 2021-153.*

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☐ **State funds affected**
- ☐ **Local funds affected**
- ☐ **Substantial economic impact (>= \$1,000,000)**
- ☒ **Approved by OSBM**
- ☒ **No fiscal note required**

**CHAPTER 13 - SOLID WASTE MANAGEMENT**

**SUBCHAPTER 13B - SOLID WASTE MANAGEMENT**

**SECTION .0500 - DISPOSAL SITES**

**15A NCAC 13B .0533 GENERAL APPLICATION REQUIREMENTS AND PROCESSING FOR C&DLF FACILITIES**

(a) An owner or operator of a C&DLF unit or facility shall submit an application document as detailed in Rule .0535 of this Section in accordance with the following criteria and scheduling requirements:

(1) New permit.

(A) An applicant for a new permit as defined by G.S. 130A-294(a3)(1)a, c, d, and e ~~130A-294(a3)(1)~~ shall submit a site study and subsequently an application for a permit to construct as set forth in Rule .0535(a) ~~and (b)~~ of this Section.

(B) An applicant for a new permit as defined by G.S. 130A-294(a3)(1)b shall submit an application for permit

- as set forth in Rule .0535(b) of this Section.
- (C) The Division shall review all permit applications in accordance with Rule .0203 of this Subchapter.
- (D) An application for a new permit is subject to the application fees set forth in G.S. 130A-295.8(d2).
- (2) Amendment to the permit. The owner or operator shall submit an application to amend the permit to construct in accordance with Rule .0535(c) of this Section for the following circumstances:
- (A) A subsequent stage of landfill development. A permit to construct issued in accordance with Paragraph (c) of this Rule approves the life-of-site development of the C&DLF unit indicated in the facility plan plus a set of plans defined in Rule .0534(b)(1) of this Section as the Division approved plans submitted by the applicant for either the entire C&DLF unit or a portion of the C&DLF unit. For any subsequent stage of landfill development that the applicant has not included in the plans required by Rule .0534(b)(1) of this Section for any prior stage of landfill development, the owner or operator shall submit the amended permit application no less than 180 days prior to the date scheduled for commencing construction.
- (B) A change in ownership or corporate structure of a permitted C&DLF facility in accordance with G.S. 130A-294(a3)(2)b. The owner or operator shall notify the Division within 30 days of a change in ownership or corporate structure in accordance with G.S. 130A-295.2(g).
- (3) Modifications to the permit. An owner or operator proposing changes to the plans approved in the permit shall request prior approval from the Division in accordance with Rule .0535(d) of this Section.
- (4) Permit for Closure and Post-Closure Care. ~~The owner or operator shall submit an application for a closure and post-closure care permit to the Division when the facility reaches its final permitted elevations and prior to initiating closure activities for the final permitted C&DLF unit at the facility in accordance with Rule .0535(e) of this Section. Within 180 days following receipt of the notice submitted to the Division in accordance with Rule .0543(c)(8) of this Section, the Division shall issue a permit for closure and post-closure care that~~ incorporates the plans identified by the owner or operator in the notice. Owners or operators that closed all C&DLF units at the facility prior to the readopted effective date of this Rule shall not be required to submit the notice described in Rule .0543(c)(8) of this Section. If a closure and post-closure care permit has not already been issued, the a permit application for closure and post-closure. The Division shall issue a permit for closure and post-closure care for these facilities ~~based on that incorporates the plans that were incorporated into the most recent permit to operate for the facility.~~ application submittal, if a closure and post-closure permit has not already been issued.
- (b) Application format requirements. All applications and plans required by Rules .0531 through .0546 of this Section shall be prepared in accordance with the following:
- (1) The application shall:
- (A) contain a cover sheet stating the project title and location, the applicant's name and address, and the engineer's name, address, signature, date of signature, and seal;
- (B) contain a statement defining the purpose of the submittal signed and dated by the applicant;
- (C) contain a table of contents or index outlining the body of the application and the appendices;
- (D) be paginated consecutively; and
- (E) identify any revised text by noting the date of revision on the page.
- (2) Drawings. The engineering drawings for all landfill facilities shall be submitted using the following format:
- (A) the cover sheet shall include the project title, applicant's name, sheet index, legend of symbols, and the engineer's name, address, signature, date of signature, and seal; and
- (B) maps and drawings shall be prepared at a scale that illustrates the subject requirements, and that is legible if printed at a size of 22 inches by 34 inches.
- (3) Number of copies. An applicant shall submit one copy of the application to the Division in an electronic format that is accessible and viewable by the Division. The Division may request that the applicant submit up to three paper copies of the application in three-ring binders.
- (c) Permitting and Public Information Procedures.
- (1) Purpose and Applicability.
- (A) Purpose. During the permitting process, the Division shall provide for public review of and input to permit documents containing the applicable

- design and operating conditions. The Division shall provide for consideration of comments received and notification to the public of the permit design as set forth in Subparagraph (4) of this Paragraph.
- (B) Applicability. Applications for a new permit as defined in G.S. 130A-294(a3)(1), or for a modification to the permit involving corrective remedy selection required by Rule .0545(g)(1) of this Section shall be subject to the requirements of this Paragraph. Applications submitted in accordance with Subparagraphs (a)(2), (a)(3), and (a)(4) of this Rule are not subject to the requirements of this Paragraph.
- (2) Draft Permits.
- (A) The Division shall review all permit applications for compliance with Rules .0531 through .0546 of this Section and Rule .0203 of this Subchapter. Once an application is complete, the Division shall either issue a notice of intent to deny the permit to the applicant or prepare a draft permit.
- (B) If the Division issues a notice of intent to deny the permit to the applicant, the notice shall include the reasons for permit denial in accordance with Rule .0203(e) of this Subchapter and G.S. 130A-294(a)(4)c.
- (C) If the Division prepares a draft permit, the draft permit shall contain all applicable terms and conditions for the permit.
- (D) All draft permits shall be subject to the procedures of Subparagraphs (3) through (9) of this Paragraph, unless otherwise specified in those Subparagraphs.
- (3) Fact Sheet. The Division shall prepare a fact sheet for every draft permit, and shall send this fact sheet to the applicant and post the fact sheet on the Division website. The fact sheet shall include:
- (A) a description of the type of facility or activity that is the subject of the draft permit;
- (B) a description of the area to be served, the volume and characteristics of the waste stream, and a projection of the useful life of the landfill;
- (C) a summary of the basis for the draft permit conditions, including references to statutory or regulatory provisions and supporting references to the permit application;
- (D) the beginning and ending dates of the comment period under Subparagraph (4) of this Paragraph;
- (E) the address where comments will be received;
- (F) the name, phone number, and e-mail address of a person to contact for additional information;
- (G) the procedures for requesting a public hearing; and
- (H) other procedures by which the public may provide comments during the comment period under Subparagraph (4) of this Paragraph, such as social media or a web-based meeting, if the Division or the applicant elects to use such procedures.
- (4) Public Notice of Permit Actions and Public Hearings.
- (A) The Division shall give public notice of each of the following: a draft permit has been prepared; a public hearing has been scheduled under Subparagraph (6) of this Paragraph; or a notice of intent to deny a permit has been prepared under Part (2)(B) of this Paragraph.
- (B) No public notice is required when a request for a permit modification is denied.
- (C) The Division shall give written notice of denial to the applicant.
- (D) Public notices may describe more than one permit or permit action.
- (E) Public notice of the preparation of a draft permit or a notice of intent to deny a permit shall allow at least 45 days for public comment.
- (F) The Division shall give public notice of a public hearing at least 15 days before the hearing; and the notice shall contain the date, time, and place of the public hearing; a description of the nature and purpose of the public hearing, including the applicable rules and procedures; and a statement of the issues raised by the persons requesting the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.
- (G) Public notice of activities described in Part (A) of this Subparagraph shall be given by publication on the Division website, by posting in the post office and public places of the municipalities nearest the site under consideration, or publication by a local news organization. The Division may also

- provide notice by posting on other State or local government websites or social media to give actual notice of the activities to persons potentially affected.
- (H) All public notices issued under this Subparagraph shall contain the name, address and phone number of the office processing the permit action for which notice is being given; the name and address of the owner and operator applying for the permit; a description of the business conducted at the facility or activity described in the permit application including the size and location of the facility and type of waste accepted; a description of the comment procedures required by Subparagraphs (5) and (6) of this Paragraph, including a statement of procedures to request a public hearing unless a hearing has already been scheduled, and other procedures by which the public may participate in the permit decision; the name, address, and telephone number of the Division contact from whom interested persons may obtain further information; and a description of the time frame and procedure for making an approval or disapproval decision of the application.
- (5) Public Comments and Requests for Public Hearings. During the public comment period any interested person may submit written comments on the draft permit and may request a public hearing if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. The Division shall consider all comments in making a final permit decision. The Division shall respond to all comments as provided in Subparagraph (9) of this Paragraph.
- (6) Public Hearings.
- (A) The Division shall hold a public hearing on a draft permit(s) when a hearing is requested. The Division may also hold a public hearing whenever such a hearing might clarify one or more issues involved in the permit decision. Public hearings held pursuant to this Rule shall be at a location accessible to the residents of the municipality closest to the subject facility. Public notice of the hearing shall be given as specified in Subparagraph (4) of this Paragraph.
- (B) Any person may submit oral or written statements and data concerning the draft permit. The Division shall extend the public comment period under Subparagraph (4) of this Paragraph to the close of any public hearing conducted under this Subparagraph. The Division may also extend the public comment period by so stating at the hearing, when information is presented at the hearing which indicates the importance of extending the period to receive additional comments, to allow potential commenters to gather more information, to allow time for submission of written versions of oral comments made at the hearing, or to allow time for rebuttals of comments made during the hearing. The Division shall publish the end date of the extended comment period on the Division's website prior to the end of the existing public comment period.
- (C) The Division shall make available to the public a recording or written transcript of the hearing upon request.
- (7) Reopening of the Public Comment Period.
- (A) In response to data, information, or arguments received during the public comment period, the Division may prepare a revised draft permit under Subparagraph (2) of this Paragraph; ~~Paragraph~~, Paragraph, prepare a revised fact sheet under Subparagraph (3) of this Paragraph, and reopen or extend the comment period under Subparagraph (4) of this Paragraph.
- (B) Comments filed during the reopened comment period shall be limited to the information that was revised in the draft permit following the original comment period. The public notice shall be in accordance with Subparagraph (4) of this Paragraph and shall define the scope of the reopening.
- (8) Permit Decision.
- (A) After the close of the public comment period under Subparagraph (4) of this Paragraph on a draft permit or a notice of intent to deny a permit, the Division shall issue a permit decision. The Division shall notify the applicant and each person who has submitted a written request for notice of the permit decision. For the purposes of this Subparagraph, a permit decision means a decision to issue, deny, or



- modify a permit in accordance with Paragraph (d) of this Rule.
- (B) A permit decision shall become effective upon the date of the service of notice of the decision unless a later date is specified in the decision.
- (9) Response to Comments.
- (A) At the time that a permit decision is issued under Subparagraph (8) of this Paragraph, the Division shall issue a written response to comments. This response shall specify which provisions, if any, of the draft permit have been changed in the permit decision, and the reasons for the change. The response shall also describe and respond to all comments pertaining to the requirements in the draft permit raised during the public comment period, or during any public hearing.
- (B) The Division shall publish the response to comments on the Division website upon request.
- (d) Permit approval or denial. The Division shall review all permit applications in accordance with Rule .0203 of this Subchapter.
- Authority G.S. 130A-294.*
- 15A NCAC 13B .0535 APPLICATION REQUIREMENTS FOR C&DLF FACILITIES**
- (a) New permit as defined in G.S. 130A-294(a3)(1)a, c, d, and e. An applicant for a new C&DLF permit as defined in G.S. 130A-294(a3)(1)a, c, d, and e shall meet the requirements of Rule .0536 of this Section prior to submitting an application for a permit to construct.
- (1) Permit to Construct. An application for a permit to construct for a new permit as defined in G.S. 130A-294(a3)(1)a, c, d, and e shall contain the following:
- (A) a facility plan that describes the comprehensive development of the C&DLF facility prepared in accordance with Rule .0537 of this Section;
- (B) a design hydrogeologic report prepared in accordance with Rule .0538(b) of this Section;
- (C) an engineering plan for the initial phase of landfill development prepared in accordance with Rule .0539 of this Section;
- (D) a construction quality assurance plan prepared in accordance with Rule .0541 of this Section;
- (E) an operation plan prepared in accordance with Rule .0542 of this Section;
- (F) a closure and post-closure plan prepared in accordance with Rule .0543 of this Section;
- (G) monitoring plans prepared in accordance with Rule .0544 of this Section;
- (H) an environmental compliance history for the applicant in accordance with G.S. 130A-295.3; and
- (I) for an applicant that is not a federal, State, or local government, an organization chart showing the ownership structure of the applicant.
- (2) Permit to Operate. The owner and operator shall meet the pre-operative requirements of the permit to construct to qualify the constructed C&DLF unit for a permit to operate.
- (b) New permit as defined in G.S. 130A-294(a3)(1)b. An application for a new C&DLF permit as defined in G.S. ~~130A-294(a3)(1)b~~ 130A-294(a3)(1)b shall identify the proposed expansion and shall contain:
- (1) a facility plan that describes the comprehensive development of the C&DLF facility prepared in accordance with Rule .0537 of this Section;
- (2) local government approval in accordance with Rule .0536(c)(11) of this Section;
- (3) information that demonstrates compliance with the rules of this Section;
- (4)~~(3)~~ an environmental compliance history for the applicant in accordance with G.S. 130A-295.3; and
- (5)~~(4)~~ for an applicant that is not a federal, State, or local government, an organization chart showing the ownership structure of the applicant.
- (c) Amendment to the permit.
- (1) An application for an amendment to the permit for a subsequent stage of landfill development in accordance with Rule .0533(a)(2)(A) of this Section shall contain the following; contain:
- (A)~~(1)~~ an updated design hydrogeologic report prepared in accordance with Rule .0538(b) of this Section;
- (B)~~(2)~~ an updated engineering plan prepared in accordance with Rule .0539 of this Section;
- (C)~~(3)~~ an updated construction quality assurance plan prepared in accordance with Rule .0541 of this Section;
- (D)~~(4)~~ an updated operation plan prepared in accordance with Rule .0542 of this Section;
- (E)~~(5)~~ an updated closure and post-closure plan prepared in accordance with Rule .0543 of this Section;
- (F)~~(6)~~ an updated monitoring plan prepared in accordance with Rule .0544 of this Section;

- (G)(7) an updated environmental compliance history for the applicant in accordance with G.S. 130A-295.3; and
- (H)(8) for an applicant that is not a federal, State, or local government, an updated organization chart showing the ownership structure of the applicant.
- (2) An application for an amendment to the permit for a change in ownership or corporate structure in accordance with Rule .0533(a)(2)(B) of this Section shall contain the following:
- (A) a description of the proposed ownership change including affected facilities and permit numbers, the schedule for the change in ownership or corporate structure, and contact name and information for the applicant;
- (B) any changes to the facility name, property owner, facility operator, or billing contact names and contact information;
- (C) if the property owner changes, a copy of the recorded property deed for the new property owner;
- (D) for an applicant that is not a federal, State, or local government, an organization chart showing the ownership structure of the applicant, which shall be a business entity registered with the NC Secretary of State;
- (E) an environmental compliance history for the applicant in accordance with G.S. 130A-295.3;
- (F) any documentation that the Division may request to determine compliance with the requirements for financial responsibility for the applicant in accordance with G.S. 130A-295.2 and Section .1800 of this Subchapter, including an executed financial assurance mechanism for the applicant;
- (G) any updates to the cost estimates required to be submitted in accordance with Section .1800 of this Subchapter;
- (H) any modifications to the plans incorporated into the permit if changes are proposed by the applicant, or to correct any information included in the plans that has changed because of the change in ownership or corporate structure, such as the owner or operator names and contact information;
- (I) for any plans for which no changes or corrections are being made, a statement that the applicant shall continue to comply with the plans incorporated into the existing permit, which shall be identified in the statement by the date they were incorporated, and the file identification number assigned by the Division to the file containing the incorporated plan;
- (J) copies of any federal, State, or local government permits or approvals that were required for the facility permit approval to operate, and that have been revised because of the change to ownership or corporate structure, or a statement that these documents have not changed; and
- (K) any additional information that the Division may request if it is necessary to determine whether any additional changes to the permit are necessary to comply with the rules of this Section.
- (d) Modifications to the permit. The owner or operator may propose to modify plans that were prepared and approved in accordance with the requirements set forth in Rules .0531 through .0546 of this Section. A complete application shall identify the requirement(s) proposed for modification and provide information that demonstrates compliance with Rules .0531 through .0546 of this Section.
- (e) ~~A permit for closure and post closure. An application for closure and post closure permit shall contain:~~
- (1) ~~an updated engineering plan prepared in accordance with Rule .0539 of this Section;~~
- (2) ~~an updated construction quality assurance plan prepared in accordance with Rule .0541 of this Section;~~
- (3) ~~an updated closure plan and updated post closure plan prepared in accordance with Rule .0543 of this Section; and~~
- (4) ~~for an applicant that is not a federal, State, or local government, an updated organization chart showing the ownership structure of the applicant.~~

Authority G.S. 130A-294.

#### **15A NCAC 13B .0543 CLOSURE AND POST-CLOSURE REQUIREMENTS FOR C&DLF FACILITIES**

(a) Purpose. This Rule shall establish criteria for the closure of all C&DLF units and subsequent requirements for post-closure compliance. The owner and operator shall develop specific plans for the closure and post-closure of the C&DLF facility or units that comply with this Rule and submit them to the Division for review and approval.

(b) Scope.

- (1) This Rule shall establish standards for the scheduling and documenting of closure of all C&DLF units and design of the cap system. Construction requirements for the cap system

shall incorporate requirements from Rules .0540 and .0541 of this Section.

- (2) This Rule shall establish standards for the monitoring and maintenance of the C&DLF unit(s) following closure.

(c) Closure criteria.

- (1) A C&DLF unit shall have a cap system installed that shall be designed and constructed to:

- (A) have a permeability less than or equal to soils underlying the landfill, or the permeability specified for the final cover in the effective permit, or a permeability no greater than  $1.0 \times 10^{-5}$  cm/sec, whichever is less;
- (B) minimize infiltration through the closed C&DLF unit by the use of a low-permeability barrier that contains a minimum 18 inches of earthen material; and
- (C) minimize erosion of the cap system and protect the low-permeability barrier from root penetration by use of an erosion layer that contains no less than 18 inches of earthen material that is capable of sustaining native plant growth.

- (2) Construction of the cap system for all C&DLF units shall conform to the plans prepared in accordance with Rules .0539 and .0541 of this Section and the following requirements:

- (A) post-settlement surface slopes shall be a minimum of five percent and a maximum of 25 percent; and
- (B) a gas venting or collection system shall be installed below the low-permeability barrier to minimize pressures exerted on the barrier.

- (3) The owner or operator may submit a request for an alternative cap system or alternative post-settlement slopes in the closure and post-closure care plan required to be submitted by Rule .0535 of this Section. The request shall include a demonstration of the following:

- (A) the alternative cap system will achieve a reduction in infiltration equivalent to or greater than the low-permeability barrier specified in Subparagraph (1) of this Paragraph;
- (B) the erosion layer will provide protection equivalent to or greater than the erosion layer specified in Subparagraph (1) of this Paragraph; and
- (C) the alternative post-settlement slopes will be stable, encourage runoff, be safe to operate, and be safe to construct during operation and closure activities.

- (4) Prior to beginning closure of each C&DLF unit as specified in Subparagraph (5) of this Paragraph, an owner or operator shall notify the Division in writing that a notice of the intent to close the unit has been placed in the operating record.

- (5) The owner or operator shall begin closure activities for that portion of each C&DLF unit meeting one or more of the following requirements, unless an extension has been granted by the Division:

- (A) no later than 30 days after the date on which the C&DLF unit receives the known final receipt of wastes;
- (B) no later than 30 days after the date that a 10 acre or greater area of waste is within 15 feet of final design grades; or
- (C) no later than one year after the most recent receipt of wastes, if the C&DLF unit has remaining capacity.

Extensions beyond the deadline for beginning closure may be granted by the Division if the owner or operator demonstrates that the portion of the C&DLF unit has the capacity to receive additional wastes and the owner or operator has and will continue to prevent threats to human health and the environment from the unclosed C&DLF unit.

- (6) The owner and operator of all C&DLF units shall complete closure activities of each C&DLF unit in accordance with the closure plan within 180 days following the beginning of closure as specified in Subparagraph (5) of this Paragraph. Extensions of the closure period may be granted by the Division if the owner or operator demonstrates that closure will, of necessity, take longer than 180 days and they have and will continue to prevent threats to human health and the environment from the unclosed C&DLF unit.

- (7) Following closure of each C&DLF unit, the owner or operator shall notify the Division that a certification, signed by the project engineer verifying that closure has been completed in accordance with the closure plan, has been placed in the operating record.

- (8) One hundred and eighty days prior to beginning closure of the final permitted C&DLF unit, an owner or operator shall submit to the Division in writing a notice of intent to close the final unit; and place a copy of the notice in the operating record. The notice shall include the anticipated date that the facility will cease waste acceptance, and a statement identifying the plans that were incorporated into the permit that the owner or operator shall comply with during the closure and post-closure care period. The notice shall include the dates that the plans

were incorporated into the facility's permit and the file identification numbers that were assigned by the Division to the files containing these plans. If the owner or operator determines that updates or revisions to the plans are necessary, the owner or operator shall submit any changes to the plans to the Division as a permit modification in accordance with Rules .0533(a)(3) and .0535(d) of this Section.

- (9)(8) Recordation. Following closure of all C&DLF units, the owner or operator shall record a notice for the landfill facility property at the local county Register of Deeds office; and notify the Division that the notice has been recorded and a copy has been placed in the operating record. The notice may be a notation on the deed to the landfill facility property, or may be some other instrument such as a declaration of restrictions on the property that is discoverable during a title search for the landfill facility property. The notice shall notify any potential purchaser of the property that the land has been used as a landfill facility and future use is restricted under the closure plan approved by the Division. The owner or operator may request approval from the Division to remove the notice. The Division shall approve removal of the notice if all wastes are removed from the landfill facility property.

(d) Closure plan contents. The owner and operator shall prepare a written closure plan that describes the steps necessary to close all C&DLF units at any point during their active life in accordance with the cap system requirements in Paragraph (c) of this Rule. The closure plan shall include the following information:

- (1) a description of the cap system and the methods and procedures to be used to install the cap that conforms to the requirements set forth in Paragraph (c) of this Rule;
- (2) an estimate of the largest area of the C&DLF unit requiring the specified cap system at any time during the active life that is consistent with the drawings prepared for the operation plan for an existing C&DLF unit, or the engineering plan or facility plan for a lateral expansion or new C&DLF unit;
- (3) an estimate of the maximum inventory of wastes on-site over the active life of the landfill facility;
- (4) a schedule for completing all activities necessary to satisfy the closure criteria set forth in Paragraph (c) of this Rule; and
- (5) the cost estimate for closure activities as required under Section .1800 of this Subchapter.

(e) Post-closure criteria.

- (1) Following closure of each C&DLF unit, the owner and operator shall conduct post-closure care. Post-closure care shall be conducted for 30 years, except as provided under

Subparagraph (2) of this Paragraph, and consist of the following:

- (A) maintaining the integrity and effectiveness of any cap system including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing rainwater that drains over land from or onto any part of the facility or unit from eroding or damaging the cap system;
- (B) monitoring the surface water and groundwater in accordance with the requirements of Rules .0544 and .0545 of this Section and maintaining the groundwater monitoring system;
- (C) maintaining and operating the gas monitoring system in accordance with the requirements of Rule .0544 of this Section; and
- (D) maintaining, operating, and decommissioning the leachate collection system, if present, in accordance with the requirements of Rule .0544 of this Section. The owner and operator may submit a request to stop managing leachate in writing to the Division. The request shall include a demonstration with supporting documentation that the operation and maintenance of leachate management systems during the active life, closure, and any post-closure care period of the C&DLF unit complied with the permit including the plans incorporated into the permit, the rules of this Subchapter, and 15A NCAC 02B and 02L; and that the current and projected volume of leachate generated and the results of leachate sample analysis during the post-closure care period indicate that the leachate no longer poses a threat to human health and the environment. The demonstration shall also include the certifications required by Subparagraph (3) of this Paragraph. The Division shall consider the information required to be submitted in the demonstration and the owner or operator's compliance history to make a determination on approval of the request.

(2) The length of the post-closure care period may be:

- (A) decreased by the Division if the owner or operator demonstrates that the reduced period is protective of human health and the environment and this

- demonstration is approved by the Division; or
- (B) increased by the Division if the Division determines that the lengthened period is necessary to protect human health and the environment.
- (3) Every five years during the post-closure care period and following completion of the post-closure care period for each C&DLF unit, the owner or operator shall notify the Division that a certification verifying that post-closure care has been conducted in accordance with the post-closure ~~plan~~ plan, has been placed in the operating record. If required by G.S. 89C, the certification shall be signed by a licensed professional engineer.
- (f) Post-closure plan contents. The owner and operator of all C&DLF units shall submit a written post-closure plan to the Division that includes the following information:
- (1) a description of the monitoring and maintenance activities required for each C&DLF unit, and the frequency at which these activities shall be performed;
  - (2) name, address, and telephone number of the person or office responsible for the facility during the post-closure period;
  - (3) a description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the cap system, base liner system, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in Rules .0531 through .0546 of this Section. The owner or operator may submit a request in writing to the Division for a disturbance. The request shall include a demonstration that disturbance of the cap system, base liner system, or other component of the containment system, including any removal of waste, will not increase the potential for fires, vector attraction, damage to these systems, or the release of dust, odors, waste, or leachate to the environment; and
  - (4) the cost estimate for post-closure activities required under Section .1800 of this Subchapter.

*Authority G.S. 130A-294.*

**15A NCAC 13B .0544 MONITORING PLANS AND REQUIREMENTS FOR C&DLF FACILITIES**

(a) The owner or operator of a C&DLF unit shall submit a water quality monitoring plan to the Division in the application for the permit to construct in accordance with Rule .0535(a)(1) of this Section that shall apply to all C&DLF units. The water quality monitoring plan shall be prepared in accordance with this Rule, and shall include information on the proposed groundwater

monitoring systems, surface water sampling locations, sampling and analysis requirements, and detection monitoring requirements provided in Paragraphs (b) and (c) of this Rule.

(b) Groundwater monitoring shall be as follows:

- (1) A groundwater monitoring system shall be installed that consists of no less than one background and three downgradient wells installed at locations and depths that yield groundwater samples from the uppermost aquifer that:

- (A) represent the quality of the background groundwater that has not been affected by leakage from the unit. Determination of background water quality shall be based on sampling of a well or wells that are hydraulically upgradient of the waste management area. However, the determination of background water quality may include sampling of wells that are not hydraulically upgradient of the waste management area where hydrogeologic conditions do not allow the owner and operator to determine which wells are hydraulically upgradient, or hydrogeologic conditions do not allow the owner and operator to place a well in a hydraulically upgradient location, or sampling at other wells will provide an indication of background groundwater quality that is as representative as that provided by the upgradient well(s); and

- (B) represent the quality of groundwater passing the relevant point of compliance as approved by the Division. The downgradient monitoring system shall be installed at the relevant point of compliance to ensure detection of groundwater contamination in the uppermost aquifer. The relevant point of compliance shall be established no more than 250 feet from a waste boundary, or shall be at least 50 feet within the facility property boundary, whichever point is closer to the waste boundary. In determining the relevant point of compliance, the Division shall consider recommendations made by the owner and operator based upon consideration of at least the hydrogeologic characteristics of the facility and surrounding land; the quantity, quality, and direction of flow of the groundwater; the proximity and withdrawal rate of the groundwater users; the existing quality of the

- groundwater, including other sources of contamination and their cumulative impacts on the groundwater, and whether the groundwater is currently used or expected to be used for drinking water; public health, safety, and welfare effects; and practicable capability of the owner and operator.
- (C) A water quality monitoring plan shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells. The plan shall include procedures and techniques for sample collection; sample preservation and shipment; chain-of-custody control; and quality assurance and quality control.
- (D) The detection groundwater monitoring program shall include sampling and analytical methods for groundwater sampling that accurately measure target constituents and other monitoring parameters in groundwater samples. Detection monitoring shall be conducted at C&DLF units at all groundwater monitoring wells that are part of the detection monitoring system as established in the approved water quality monitoring plan. The detection groundwater monitoring program shall include monitoring for the constituents listed in Appendix I of 40 CFR 258, and the following constituents: mercury, chloride, manganese, sulfate, iron, specific conductance, pH, temperature, alkalinity, and total dissolved solids. The monitoring frequency for all detection monitoring constituents shall be no less than annual during the active life of the facility, and during closure and the post-closure period. To establish baseline, no less than four independent samples from each background and downgradient monitoring well shall be collected within a twelve-month period and analyzed for the constituents required in this Paragraph, with no less than one sample collected from each new monitoring well before waste placement in each new cell or phase. The water quality monitoring plan shall include a description of the procedures used to establish baseline at the C&DLF unit. No less than one sample from each background and downgradient monitoring well shall be collected and analyzed during subsequent annual sampling events. C&DLF units shall comply with the groundwater quality standards ~~and interim maximum allowable concentrations (IMACs)~~ set forth in 15A NCAC 02L .0202 and the groundwater protection standards established in Rule .0545(c) of this Section.
- (E) The sampling procedures and frequency shall be protective of human health and the environment.
- (2) Each time groundwater is sampled, elevations shall be measured in each well prior to purging. Groundwater elevations in wells which monitor the same waste management area shall be measured within a 24-hour ~~24-hour~~ period of time to avoid temporal variations in groundwater flow that could preclude accurate determination of groundwater flow rate and direction. In order to determine accurate groundwater elevations for each monitoring well, the wells shall have been surveyed by a licensed professional land surveyor if required by G.S. 89C. The survey of the wells shall conform to the following levels of accuracy: horizontal location to the nearest 0.1 foot, vertical control for the ground surface elevation to the nearest 0.01 foot, and vertical control for the measuring reference point on the top of the inner well casing to the nearest 0.01 foot. In order to determine the rate of groundwater flow, the owner or operator shall provide data for hydraulic conductivity and porosity for the formation materials at each of the well locations.
- (3) The owner or operator shall establish existing conditions of groundwater quality in hydraulically upgradient or background well(s) for each of the monitoring parameters or constituents required in Part (1)(D) of this Paragraph. Statistical analysis used to establish existing conditions of groundwater quality shall be in accordance with Subparagraphs (4) and (5) of this Paragraph and the minimum number of samples required by the statistical method used shall be met.
- (4) Should the owner or operator choose to perform statistical analysis of groundwater quality data for the purpose of establishing background concentrations or to determine if there is an exceedance of the groundwater quality standards ~~and IMACs~~ established in 15A NCAC 02L .0202 or the groundwater protection standards established in Rule .0545(c) of this Section, the owner or operator

shall select one of the following statistical methods to be used in evaluating groundwater monitoring data for each constituent of concern. The statistical test chosen shall be conducted separately for each constituent of concern in each well.

- (A) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.
  - (B) A parametric analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.
  - (C) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.
  - (D) A control chart approach that gives control limits for each constituent.
  - (E) Another statistical test method that meets the performance standards of this Rule. The owner or operator shall submit a justification for an alternative test method to the Division for approval to determine compliance with this Rule. The justification shall demonstrate that the alternative statistical test method meets the performance standards in Subparagraph (5) of this Paragraph. If approved, the owner or operator shall place a copy of the justification for an alternative test method in the operating record.
- (5) Any statistical method chosen to evaluate groundwater monitoring data shall comply with the following performance standards:
- (A) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or constituents of concern. If the distribution of the chemical parameters or constituents of

concern is shown by the owner or operator or the Division to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free theory test shall be used. If the distributions for the constituents differ, more than one statistical method shall be considered.

- (B) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05. However, the Type I error of no less than 0.01 for individual well comparisons shall be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.
- (C) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined by the analyst after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.
- (D) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval shall contain, shall be protective of human health and the environment. These parameters shall be determined by the analyst after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.
- (E) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be the

- lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.
- (F) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.
- (6) Within 120 days of completing a groundwater sampling event, the owner or operator shall submit to the Division a monitoring report in an electronic format that is accessible and viewable by the Division that includes information from the sampling event including field observations relating to the condition of the monitoring wells; field data; a summary of the laboratory analytical data report; statistical analysis (if utilized), field sampling methods and quality assurance and quality control data; information on groundwater flow direction; calculations of groundwater flow rate; and for each well, any constituents that exceed groundwater quality standards ~~and IMACs~~ set forth in 15A NCAC 02L .0202 or the groundwater protection standards established in Rule .0545(c) of this Section.
- (7) If the owner or operator determines upon evaluation of laboratory data or by a verification sampling event that there is an exceedance of the groundwater quality standards ~~and IMACs~~ established in accordance with 15A NCAC 02L .0202, or the groundwater protection standards established in accordance with Rule .0545(c) of this Section for one or more of the constituents being monitored at any monitoring well, the owner or operator:
- (A) shall, within 14 days of this finding, report to the Division and place a notice in the operating record indicating which constituents have exceeded groundwater quality standards ~~and IMACs~~ established in accordance with 15A NCAC 02L .0202, or the groundwater protection standards established in accordance with Rule .0545(c) of this Section;
- (B) shall establish an assessment monitoring program in accordance with Rule .0545 of this Section except as provided for in Part (C) of this Subparagraph; and
- (C) may demonstrate that a source other than a C&DLF unit caused the exceedance, or the exceedance resulted from an error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. A report documenting this demonstration shall be submitted to the Division for review. If required by G.S. 89C or G.S. 89E, a licensed professional engineer or licensed geologist shall prepare these documents. [Note: The North Carolina Board of Examiners for Engineers and Surveyors and the Board of Licensing of Geologist has determined, via letters dated July 16, 2010 and November 30, 2010 respectively, that preparation of documents pursuant to this Paragraph constitutes practicing engineering or geology under G.S. 89C and G.S. 89E.] A copy of this report shall also be placed in the operating record. If a successful demonstration is made, documented, and approved by the Division, the owner or operator may continue detection monitoring. If after 90 days of the initial determination of exceedance, a successful demonstration is not made, the owner or operator shall initiate an assessment monitoring program as required by Rule .0545 of this Section.
- (8) Monitoring wells shall be designed and constructed in accordance with 15A NCAC 02C.
- (A) Owners and operators shall obtain approval from the Division for the design, installation, development, and decommission of any monitoring well or piezometer. Documentation shall be placed in the operating record and provided to the Division.
- (B) The monitoring wells and piezometers shall be operated, maintained, and accessible so that they perform to design specifications throughout the life of the monitoring program.
- (9) The number, spacing, and depths of groundwater monitoring points shall be determined based upon site-specific technical information that shall include an investigation of:
- (A) aquifer thickness, groundwater flow rate, and groundwater flow direction, including seasonal and temporal fluctuations in groundwater flow; and
- (B) thickness, stratigraphy, lithology, hydraulic conductivities, porosities, and effective porosities of the saturated and unsaturated geologic units, including fill materials



- ~~materials, overlying and comprising the uppermost aquifer, aquifer,~~
- (10) In addition to groundwater monitoring wells, the use of alternative monitoring systems may be:
- (A) required by the Division at sites where the owner or operator does not control the property from any landfill unit to the groundwater discharge features; or
- (B) allowed by the Division at sites with hydrogeologic conditions favorable to detection monitoring by alternative methods.
- (11) Owners and operators of C&DLF units shall comply with the groundwater monitoring, assessment, and corrective action requirements under Rules .0544 and .0545 of this Section according to the following schedule:
- (A) new C&DLF units shall be in compliance with the requirements before waste can be placed in the unit; and
- (B) lateral expansions to existing C&DLF units shall be in compliance with the requirements before waste can be placed in the expansion area.
- (12) Groundwater quality standards ~~and IMACs~~ established under 15A NCAC 02L .0202 and groundwater protection standards established in accordance with Rule .0545(c) of this Section shall not be exceeded.
- (c) Surface water monitoring shall meet the following criteria:
- (1) The monitoring shall include sample collection from surface water features on or bordering the facility property and include no less than one upstream and one downstream sampling location. Surface water samples shall be analyzed for constituents that include those listed in Part (b)(1)(D) of this Rule. The monitoring frequency shall be no less than annual during the active life of the facility, and no less than annual during the closure and post-closure care period.
- (2) Responsibility for sample collection and analysis shall be defined as a part of the monitoring plan.
- (3) Information used for the development of the surface water monitoring system shall include:
- (A) drainage patterns and other hydrological conditions in the area;
- (B) proximity of surface water to the facility;
- (C) uses that are being or may be made of any surface water that may be affected by the facility; and
- (D) any other factors that relate to the potential for surface water impacts from the facility.
- (4) The C&DLF unit shall not cause an exceedance of the surface water standards established under 15A NCAC 02B .0200.
- (d) The owner or operator of a C&DLF unit shall submit a landfill gas monitoring plan to the Division prepared in accordance with this Rule that shall apply to all C&DLF units. Landfill gas monitoring shall be as follows:
- (1) Owners and operators of C&DLF units shall ensure that:
- (A) the concentration of explosive gases generated by the facility does not exceed 25 percent of the lower explosive limit in on-site facility structures, excluding gas control or recovery system components; and
- (B) the concentration of explosive gases does not exceed the lower explosive limit at the facility property boundary.
- (2) Owners and operators of all C&DLF units shall implement a routine landfill gas monitoring program to ensure that the standards of Subparagraph (1) of this Paragraph are met as follows:
- (A) The type of monitoring shall be determined based on soil conditions, the hydrogeologic conditions under and surrounding the facility, the hydraulic conditions on and surrounding the facility, the location of facility structures and property boundaries, and the location of all off-site structures adjacent to property boundaries.
- (B) The concentration of methane in landfill gas shall be monitored. The monitoring shall be conducted at a frequency of no less than quarterly.
- (C) The Division may also require quarterly monitoring of landfill gas for explosive gases other than methane, such as hydrogen sulfide, if it is necessary to ensure compliance with Subparagraph (1) of this Paragraph. If the Division requires monitoring of additional explosive gases, the Division shall provide written notice to the facility of the requirement.
- (3) If explosive gas levels exceeding the limits specified in Subparagraph (1) of this Paragraph are detected, the owner and operator shall:
- (A) upon discovery of detection, notify the Division and take any steps that may be necessary to ensure protection of human health, such as evacuation or monitoring of offsite structures for explosive gases;
- (B) within seven days of detection, place in the operating record the explosive gas levels detected and a description of

the steps taken to protect human health; and

- (C) within 60 days of detection, implement a remediation plan for the explosive gas releases, place a copy of the plan in the operating record, and notify the Division that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

- (4) The owner or operator may submit a request in writing to the Division for an extension or alternate schedule for compliance with Parts (3)(B) and (3)(C) of this Paragraph, and the request shall include a justification for the alternate schedule. In making the determination on approval of the request, the Division shall consider the following factors:

- (A) the justification submitted by the owner or operator;
- (B) actions taken by the owner or operator upon discovery of the exceedances;
- (C) the explosive gas levels measured and reported; and
- (D) the circumstances and use of properties surrounding the facility.

(e) Owners or operators of C&DLF units shall develop and implement a waste screening plan as required by G.S. 130A-295.6(g) in accordance with the effective date and applicability requirements of S.L. 2007-550, s. 9.(b). The plan shall meet the same requirements as municipal solid waste landfills set forth in 40 CFR 258.20 and shall include screening for the wastes prohibited by Rule .0542(e) of this Section. Owners and operators of ~~C&DLF MSWLF~~ units that are not subject to G.S. 130A-295.6(g) shall develop and implement a waste screening plan that shall comply with 40 CFR 258.20, and shall include screening and a contingency plan for the wastes prohibited by Rule .0542(e) of this Section.

(f) The water quality monitoring plan shall include any other monitoring plan or program which is necessary according to the operating plan or the effective permit.

(g) Water quality monitoring plans and landfill gas monitoring plans shall be prepared under the charge of and bear the seal of a licensed professional engineer or licensed geologist if required by G.S. 89C or 89E, respectively.

(h) Water quality monitoring plans and landfill gas monitoring plans shall be capable of providing detection of any release of monitored constituents from any point in a disposal cell or leachate surface impoundment to the uppermost aquifer, air, surface waters, or proximal area.

(i) Water quality monitoring plans and landfill gas monitoring plans shall be submitted to the Division for review. The Division shall date and stamp the water quality monitoring plan and landfill gas monitoring plan "approved" if they meet the requirements of this Rule. A copy of the approved monitoring plan shall be placed in the operating record.

(j) Once established at a C&DLF facility, all monitoring shall be conducted throughout the active life and post-closure care period for all C&DLF units.

Authority G.S. 130A-294.

### **15A NCAC 13B .0545 ASSESSMENT AND CORRECTIVE ACTION PROGRAM FOR C&DLF FACILITIES AND UNITS**

(a) Assessment Program. Assessment monitoring shall be required if, in any sampling event, one or more constituents being monitored in any monitoring well are detected above the groundwater quality standards ~~or interim maximum allowable concentrations (IMACs)~~ established in accordance with 15A NCAC 02L .0202, or the groundwater protection standard ~~standards~~ established in accordance with Paragraph (c) of this Rule. The owner and operator ~~shall~~ shall

- (1) within ~~Within~~ 30 days of obtaining the results of any sampling event, notify all persons who own land or reside on land that directly overlies any part of the plume of contamination if contaminants have migrated off-site or are thought to have migrated off-site; and off-site;
- (2) within ~~Within~~ 90 days of triggering an assessment monitoring program in accordance with this Paragraph, the owner and operator shall submit an assessment monitoring work plan for Division review. The Division shall date and stamp the assessment monitoring plan "approved" if the requirements in Paragraph (b) of this Rule are met. The owner and operator shall place the approved program in the operation record, and notify appropriate local government officials, such as the county manager, city manager, and county health department.

(b) Assessment Monitoring Work Plan. The assessment monitoring work plan shall be in accordance with the following:

- (1) Install additional wells downgradient of the compliance wells where exceedances have been detected to characterize the nature and extent of the contamination. The additional wells shall include no less than one additional groundwater monitoring well or methane gas monitoring well at the facility's property boundary or the compliance boundary, as defined in 15A NCAC 02L .0102, in the direction of contaminant migration most likely to show impact based on the established geology and hydrogeology. The additional monitoring wells shall characterize the nature and extent of the release by determining the following factors:
  - (A) lithology of the aquifer and unsaturated zone;
  - (B) hydraulic conductivity of the aquifer and unsaturated zone;
  - (C) groundwater flow rates;
  - (D) horizontal and vertical extent of the release;
  - (E) resource value of the aquifer; and
  - (F) nature, fate, and transport of any detected constituents.

- (2) No less than one sample from each monitoring well, including any well installed in accordance with Subparagraph (1) of this Paragraph, shall be collected and analyzed for the constituents listed in 40 CFR 258 Appendix II during the initial sampling event for assessment monitoring. After the initial sampling event, for any constituent detected in the downgradient wells as the result of the Appendix II analysis, no less than three additional independent samples from each background and downgradient monitoring well shall be collected and analyzed to establish a baseline for the new detected constituents. Once determined, baseline data for the new detected constituents shall be reported to the Division.
- (c) For constituents that do not have a groundwater quality standard ~~or IMAC~~ established in accordance with 15A NCAC 02L .0202, the Division shall establish a groundwater protection ~~standard standards~~ as follows:
- (1) The groundwater protection standard shall be the most protective of the following:
    - (A) for constituents for which a maximum contaminant level (MCL) has been promulgated under 40 CFR 141, the MCL for that constituent;
    - (B) for constituents for which a public water quality standard has been established under 15A NCAC 18C, the public water quality standard for that constituent;
    - (C) for constituents for which no MCLs or public water quality standards have been promulgated, the background concentration for the constituent established from the monitoring wells required in accordance with Rule .0544(b)(1)(A), (b)(4), and (b)(5) of this Section; or
  - (2) The Division may establish an alternative groundwater protection standard for constituents for which no MCL or water quality standard have been established. These groundwater protection standards shall be health-based levels that satisfy the following criteria:
    - (A) The level is derived in a manner consistent with U.S. E.P.A. guidelines provided in 40 CFR 258.55(i)(1) for assessing the health risks of environmental pollutants;
    - (B) The level is based on scientifically valid studies conducted in accordance with 40 CFR 792, or equivalent;
    - (C) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level due to continuous lifetime exposure of  $1 \times 10^{-6}$ ;  ~~$1 \times 10^{-6}$~~ ;
  - (D) For systemic toxicants, the level represents a concentration to which the human population, including sensitive subgroups, could be exposed on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For the purposes of this Rule, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.
- (3) In establishing groundwater protection standards under this Paragraph the Division may consider the following:
- (A) multiple contaminants in the groundwater;
  - (B) exposure threats to sensitive environmental receptors; and
  - (C) other site-specific exposure or potential exposure to groundwater.
- (4) The owner or operator may request the Division approve a background level for the unit that is higher than the standard established in 15A NCAC 02L .0202, or the standard established in Subparagraph (1) of this Paragraph, or health-based levels identified under Subparagraph (2) of this Paragraph. The background level shall be established in accordance with Rule .0544(b)(1)(A), (b)(4), and (b)(5) of this Section. The approved background level shall be the established groundwater protection standard.
- (d) Assessment Monitoring. After obtaining the results from the initial sampling event required in Subparagraph (b)(2) of this Rule, the owner and operator shall perform assessment monitoring in accordance with the following:
- (1) For each assessment monitoring event, including the sampling required in Subparagraph (b)(2) of this Rule, the owner or operator shall submit an assessment monitoring report to the Division that complies with Rule .0544(b)(6) of this Section. If required by G.S. 89E, the report shall be certified by a licensed geologist.
  - (2) Within 14 days of receipt of analytical results, the owner or operator shall submit notice to the Division in writing and place the notice in the operating record identifying the 40 CFR 258 Appendix II constituents that have not previously been detected and reported to the Division.
  - (3) Within 90 days, and no less than semiannually thereafter until the Division approves a return to detection monitoring in accordance with Subparagraphs (6) or (7) of this Paragraph, the owner or operator shall sample all of the monitoring wells for the unit in the detection monitoring system established in Rule .0544 of this Section for all constituents listed in 40 CFR

- 258 Appendix I and for those constituents in Appendix II not listed in Appendix I that have been detected. Any well with a reported groundwater standard exceedance shall be sampled for all constituents in 40 CFR 258 Appendix II at least annually unless otherwise approved in accordance with Subparagraphs (4) or (5) of this Paragraph. A report from each sampling event shall be submitted to the Division as specified in Subparagraph (1) of this Paragraph and placed in the facility operating record.
- (4) The Division may approve a subset of wells to be sampled and analyzed during assessment monitoring if the owner or operator demonstrates that the proposed wells to be sampled meet the requirements for assessment monitoring in accordance with this Paragraph. The Division may remove any of the additional monitoring parameters not listed in Rule .0544(b)(1)(D) of this Section from the monitoring list for a C&DLF unit if the owner or operator can show that the constituents proposed for removal are not expected to be in or derived from the waste contained in the unit.
- (5) The Division may approve an alternate frequency or subset of wells for repeated sampling and analysis for 40 CFR 258 Appendix II constituents, not listed in Appendix I, required during the active life and post-closure care of the unit considering all of the following factors:
- (A) lithology of the aquifer and unsaturated zone;
  - (B) hydraulic conductivity of the aquifer and unsaturated zone;
  - (C) groundwater flow rates;
  - (D) minimum distance between the upgradient edge of the C&DLF unit and the downgradient monitor well screened interval;
  - (E) resource value of the aquifer; and
  - (F) nature, fate, and transport of any detected constituents.
- (6) During assessment monitoring, the owner or operator may demonstrate, in accordance with Rule .0544(b)(7) of this Section for any constituent not previously reported to have a groundwater standard exceedance, that a source other than a C&DLF unit caused the exceedance of the groundwater quality standards ~~and IMACs~~ established in accordance with 15A NCAC 02L .0202 or the groundwater protection standards established in accordance with Paragraph (c) of this Rule, or that the exceedance resulted from error in sampling, analysis, or natural variation in groundwater quality. If a successful demonstration is made for each exceedance, the owner or operator shall continue the existing assessment monitoring that was required by this Paragraph unless and until the requirements of Subparagraph (7) of this Paragraph are met.
- (7) The Division shall give approval to the owner or operator to return to detection monitoring in accordance with Rule .0544(b)(1)(D) of this Section if all of the following are met:
- (A) for two consecutive sampling events, the concentrations of the constituents are shown to be at or below groundwater quality standards ~~and IMACs~~ established in accordance with 15A NCAC 02L .0202, or the groundwater protection standards established in accordance with Paragraph (c) of this Rule;
  - (B) the plume is not migrating horizontally or vertically; and
  - (C) the plume has not exceeded the compliance boundary.
- (8) After completion of Paragraphs (a) and (b) of this Rule and if one or more constituents are detected for two consecutive semiannual sampling events above background, the groundwater quality standards established in 15A NCAC 02L .0202, or the groundwater protection standards established in accordance with Paragraph (c) of this Rule, the owner or operator shall initiate within 90 days an Assessment of Corrective Measures in accordance with Paragraph (e) of this Rule, and shall continue to monitor in accordance with the approved assessment monitoring program.
- (e) Assessment of Corrective Measures. If the assessment of corrective measures is required in accordance with Subparagraph (d)(8) of this Rule, the assessment of corrective measures shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under this Rule. An assessment of corrective measures document shall be completed within 120 days, or as approved by the Division, and shall address the following:
- (1) the performance, reliability, ease of implementation, and potential impacts of potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;
  - (2) the time required to begin and to complete the remedy;
  - (3) the costs of remedy implementation; and
  - (4) the institutional requirements such as State and local permit requirements or other environmental or public health requirements that may affect implementation of the remedy(s).
- (f) Within 120 days of completion of the assessment of corrective measures in accordance with Paragraph (e) of this Rule, the owner and operator shall discuss the results of the assessment of corrective measures, prior to the selection of the remedy, in a

public meeting with interested and affected parties. The owner and operator shall provide a public notice of the meeting at least 30 days prior to the meeting. The notice shall include the time, place, date, and purpose of the public meeting. A copy of the public notice shall be forwarded to the Division at least five days prior to publication. The owner and operator shall mail a copy of the public notice to those persons requesting notification. Public notice shall be in accordance with Rule .0533(c)(4) of this Section.

(g) Selection of Remedy. Based on the results of the Assessment of Corrective Actions, the owner and operator shall select a remedy as follows:

- (1) Within 30 days of selecting a remedy, the permittee shall submit an application to modify the permit describing the selected remedy to the Division for evaluation and approval. The application shall be subject to the processing requirements set forth in Rule .0533(c) of this Section. The application shall include the demonstrations necessary to comply with the financial assurance requirements in accordance with Rule .0546 of this Section and Section .1800 of this Subchapter.
- (2) Remedies shall:
  - (A) be protective of human health and the environment;
  - (B) attain the approved groundwater protection standards in accordance with Rule .0544(b)(12) of this Section;
  - (C) control the source(s) of releases to reduce or eliminate, to the maximum extent practicable, further releases of 40 CFR 258 Appendix II constituents into the environment; and
  - (D) comply with standards for management of wastes as specified in Paragraph (n) of this Rule.
- (3) In selecting a remedy that meets the standards of Subparagraph (2) of this Paragraph, the owner and operator shall consider the following factors:
  - (A) The long-term and short-term effectiveness and protectiveness of the potential remedy(s), along with the degree of certainty that the remedy will prove successful based on consideration of the magnitude of reduction of existing risks; magnitude of residual risks in terms of likelihood of further releases due to wastes remaining following implementation of a remedy; the type and degree of long-term management required, including monitoring, operation, and maintenance; short-term risks that might be posed to the community, to workers, or to the environment during implementation of such a remedy, including potential threats to human

health and the environment associated with excavation, transportation, and redisposal or containment; time until full protection is achieved; potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment; long-term reliability of the engineering and institutional controls; and potential need for replacement of the remedy.

- (B) The effectiveness of the remedy in controlling the source to reduce further releases, based on consideration of the extent to which containment practices will reduce further releases, and the extent to which treatment technologies may be used.
  - (C) The ease or difficulty of implementing a potential remedy, based on consideration of the degree of difficulty associated with constructing the technology; the expected operational reliability of the technologies; the need to coordinate with and obtain necessary approvals and permits from other agencies; the availability of necessary equipment and specialists; and available capacity and location of needed treatment, storage, and disposal services.
  - (D) The practicable capability of the owner and operator, including a consideration of the technical and economic capability.
- (4) The owner and operator shall specify as part of the selected remedy a schedule for initiating and completing remedial activities included in a corrective action plan. This schedule shall be submitted to the Division for review and approval to determine compliance with this Rule. The owner and operator shall consider the following factors in determining the schedule of remedial activities:
- (A) nature and extent of contamination;
  - (B) practical capabilities of remedial technologies in achieving compliance with the approved groundwater protection standards and other objectives of the remedy;
  - (C) availability of treatment or disposal capacity for wastes managed during implementation of the remedy;
  - (D) desirability of utilizing technologies that are not currently available, but

which may offer advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;

- (E) potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;
- (F) resource value of the aquifer, including current and future uses; proximity and withdrawal rate of users; groundwater quantity and quality; the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to contaminants; the hydrogeologic characteristics of the facility and surrounding land; groundwater removal and treatment costs; the costs and availability of alternative water supplies; and
- (G) practical capability of the owner and operator.

(h) The Division may determine that active remediation of a release of any detected constituent from a C&DLF unit is not necessary if the owner or operator demonstrates to the Division that:

- (1) the groundwater is contaminated by substances that have originated from a source other than a C&DLF unit and those substances are present in concentrations such that active cleanup of the release from the C&DLF unit would provide no reduction in risk to actual or potential receptors; ~~or~~
- (2) the constituent or constituents are present in groundwater that is not currently or expected to be a source of drinking water and is not hydraulically connected with water to which the constituents are migrating or are likely to migrate in concentrations that would exceed the approved groundwater protection standards;
- (3) remediation of the release is technically impracticable; or
- (4) remediation results in unacceptable cross-media impacts.

(i) A determination by the Division pursuant to this Paragraph shall not affect the authority of the State to require the owner and operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the groundwater, to prevent exposure to the groundwater, or to remediate groundwater to concentrations that are technically practicable and reduce threats to human health or the environment.

(j) Implementation of the Corrective Action Program. Based on the approved schedule for initiation and completion of remedial activities, the owner and operator shall:

- (1) within 120 days after the approval of the selected remedy or as approved by the Division,

submit a corrective action plan that establishes and implements a corrective action groundwater monitoring program that:

- (A) meets the requirements of an assessment monitoring program under Paragraphs (a), (b), and (d) of this Rule;
- (B) indicates the effectiveness of the corrective action remedy; and
- (C) demonstrates compliance with groundwater quality standards ~~or IMACs~~ established in accordance with 15A NCAC 02L .0202 and groundwater protection standard ~~standards~~ established in accordance with Paragraph (c) of this Rule, pursuant to Paragraph (o) of this Rule; ~~Rule.~~
- (2) implement the approved corrective action remedy; and
- (3) take any interim measures necessary to ensure the protection of human health and the environment. Interim measures shall be consistent with the objectives of and contribute to the performance of any remedy that may be required. The following factors shall be considered by an owner and operator in determining whether interim measures are necessary:
  - (A) time required to develop and implement a final remedy;
  - (B) actual or potential exposure of nearby populations or environmental receptors to constituents;
  - (C) actual or potential contamination of drinking water supplies or sensitive ecosystems;
  - (D) further degradation of the groundwater that may occur if remedial action is not initiated;
  - (E) weather conditions that may cause constituents of concern to migrate or be released;
  - (F) risks of fire or explosion, or potential for exposure to constituents of concern resulting from an accident or failure of a container or handling system; and
  - (G) other situations that may pose threats to human health or the environment.

(k) The owner or operator shall submit a corrective action evaluation report to the Division in an electronic format that is accessible and viewable by the Division no less than once every five calendar years until the owner and operator are released from the corrective action program in accordance with Paragraph (q) of this Rule. The report shall contain a description of the corrective measure remedies that have been implemented or completed since the initiation of the corrective action program; and an evaluation of the effectiveness of the corrective action program. The owner or operator may request to submit the corrective action evaluation

report to the Division on an alternate schedule. The owner or operator shall submit the request in writing to the Division, and the request shall include a justification for the alternate schedule. In making the determination on approval of the request, the Division shall consider the following factors:

- (1) the schedules for corrective action established in the corrective action plan and changes to corrective actions;
- (2) the justification submitted by the owner or operator;
- (3) the size, direction, and rate of travel of the contaminant plume;
- (4) the circumstances and use of properties, groundwater, and surface water downgradient of the contaminant plume; and
- (5) whether the alternate schedule complies with Article 9 of Chapter 130A of the General Statutes and the rules adopted thereunder.

(l) The owner or operator or the Division may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of Subparagraph (f)(2) of this Rule are not being achieved through the remedy selected. In such cases, the owner and operator shall implement other methods or techniques to comply with Paragraph (g) of this Rule unless the Division determines that active remediation is not necessary in accordance with Paragraph (h) of this Rule.

(m) If the owner or operator determines that compliance with requirements of Subparagraph (g)(2) of this Rule cannot be achieved with any currently available methods, the owner and operator shall:

- (1) obtain certification of a licensed professional engineer or licensed geologist, if required by G.S. 89C or 89E, and approval from the Division that compliance with the requirements under Subparagraph (g)(2) of this Rule cannot be achieved with any currently available methods;
- (2) implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment;
- (3) implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are technically practicable and consistent with the overall objective of the remedy; and
- (4) submit a report justifying the alternative measures to the Division for review. The Division shall date and stamp the report "approved" if the conditions of this Paragraph are satisfied. The approved report shall be placed in the operating record prior to implementing the alternative measures.

(n) All solid wastes that are managed pursuant to a remedy required under Paragraph (g) of this Rule, or an interim measure required under Paragraph (g) of this Rule, shall be managed in a

manner that is protective of human health and the environment, and that complies with applicable State and federal requirements. (o) Remedies selected pursuant to Paragraph (g) of this Rule shall be considered complete when:

- (1) the owner and operator complies with the groundwater quality and groundwater protection standards at all points within the plume of contamination that lie beyond the relevant point of compliance;
- (2) compliance with the groundwater quality and groundwater protection standards has been achieved by demonstrating that concentrations of constituents have not exceeded these standards for a period of three consecutive years, consistent with performance standards in Subparagraph (g)(2) of this Rule; and
- (3) all actions required to complete the remedy have been satisfied.

(p) Upon completion of the remedy, the owner and operator shall submit a report to the Division documenting that the remedy has been completed in compliance with Paragraph (o) of this Rule. If required by G.S. 89C or 89E, a licensed professional engineer or licensed geologist shall prepare and sign these documents. This report shall also be signed by the owner or operator. Upon approval by the Division, this report shall be placed in the operating record.

(q) When, upon completion of the certification, the Division determines that the corrective action remedy has been completed in accordance with Paragraph (o) of this Rule, the owner and operator shall be released from the requirements for financial assurance for the corrective action program under Rule .0546 of this Section and Section .1800 of this Subchapter. Nothing in this Paragraph shall release the owner or operator from the requirements for financial assurance for closure, post-closure care, or potential assessment and corrective action in accordance with Rule .0546 of this Section and Section .1800 of this Subchapter.

*Authority G.S. 130A-294.*

## **SECTION .1600 - REQUIREMENTS FOR MUNICIPAL SOLID WASTE LANDFILL FACILITIES (MSWLFS)**

### **15A NCAC 13B .1603 GENERAL APPLICATION REQUIREMENTS AND PROCESSING**

(a) An owner or operator of a MSWLF unit or facility shall submit an application document as detailed in Rule .1617 of this Section in accordance with the following criteria and scheduling requirements:

- (1) New permit.
  - (A) An applicant for a new permit as defined by G.S. 130A-294(a3)(1)a., c., d., and e. ~~130A-294(a3)(4)~~ shall submit a site study and subsequently an application for a permit to construct as set forth in Rule .1617(a) of this Section.
  - (B) An applicant for a new permit as defined by G.S. 130A-294(a3)(1)b.

- shall submit an application for permit as set forth in Rule .1617(b) of this Section.
- (C) The Division shall review all permit applications in accordance with Rule .0203 of this Subchapter.
- (D) An application for a new permit is subject to the application fees set forth in G.S. 130A-295.8(d2).
- (2) Amendment to the permit. The owner or operator shall submit an application to amend the permit to construct in accordance with Rule .1617(c) of this Section for the following circumstances:
- (A) A subsequent stage of landfill development. A permit to construct issued in accordance with Paragraph (c) of this Rule approves the life-of-site development of the MSWLF unit indicated in the facility plan plus a set of plans, defined in Rule .1604(b)(1) of this Section as the Division approved plans submitted by the applicant for either the entire MSWLF unit or a portion of the MSWLF unit. For any subsequent stage of landfill development that the applicant has not included in the plans required by Rule .1604(b)(1) of this Section for any prior stage of landfill development, the owner or operator shall submit the amended permit application no less than 180 days prior to the date scheduled for commencing construction.
- (B) A change in ownership or corporate structure of a permitted MSWLF facility in accordance with G.S. 130A-294(a3)(2)b. The owner or operator shall notify the Division in writing within 30 days of a change in ownership or corporate structure in accordance with G.S. 130A-295.2(g).
- (3) Modifications to the permit. An owner or operator proposing changes to the plans approved in the permit shall request prior approval from the Division in accordance with Rule .1617(d) of this Section.
- (4) Permit for Closure and Post-Closure Care. ~~The owner or operator shall submit an application for a closure and post-closure care permit to the Division when the facility reaches its final permitted elevations and prior to initiating closure activities for the final permitted MSWLF unit at the facility in accordance with Rule .1617(e) of this Section. Within 180 days following receipt of the notice submitted to the Division in accordance with Rule .1627(c)(8) of this Section, the Division shall issue a permit~~ for closure and post-closure care that incorporates the plans identified by the owner or operator in the notice. Owners or operators that closed all MSWLF units at the facility prior to the readopted effective date of this Rule shall not be required to submit the notice described in Rule .1627(c)(8) of this Section. If a closure and post-closure care permit has not already been issued, the a permit application for closure and post-closure. The Division shall issue a permit for closure and post-closure care for these facilities ~~based on that incorporates the plans that were incorporated into the most recent permit to operate for the facility.~~ application submittal, if a closure and post-closure permit has not already been issued.
- (b) Application format requirements. All applications and plans required by this Section shall be prepared in accordance with the following:
- (1) The application shall:
- (A) contain a cover sheet, stating the project title and location, the applicant's name, and the engineer's name, address, signature, date of signature, and seal;
- (B) contain a statement defining the purpose of the submittal signed and dated by the applicant;
- (C) contain a table of contents or index outlining the body of the application and the appendices;
- (D) be paginated consecutively; and
- (E) identify any revised text by noting the date of revision on the page.
- (2) Drawings. The engineering drawings for all landfill facilities shall be submitted using the following format:
- (A) the cover sheet shall include the project title, applicant's name, sheet index, legend of symbols, and the engineer's name, address, signature, date of signature, and seal; and
- (B) maps and drawings shall be prepared at a scale that illustrates the subject requirements, and that is legible if printed at a size of 22 inches by 34 inches.
- (3) Number of copies. An applicant shall submit one copy of the application to the Division in an electronic format that is accessible and viewable by the Division. The Division may request that the applicant submit up to three paper copies of the application in three-ring binders.
- (c) Permitting and public information procedures.
- (1) Purpose and Applicability.
- (A) Purpose. During the permitting process, the Division shall provide for public review of and input to permit



- documents containing the applicable design and operating conditions. The Division shall provide for consideration of comments received and notification to the public of the permit design as set forth in Subparagraph (4) of this Paragraph.
- (B) Applicability. Applications for a new permit as defined in G.S. 130A-294(a3)(1), or for a modification to the permit involving corrective remedy selection required by Rule .1636 of this Section shall be subject to the requirements of this Paragraph. Applications submitted in accordance with Subparagraphs (a)(2), (a)(3), and (a)(4) of this Rule are not subject to the requirements of this Paragraph.
- (2) Draft Permits.
- (A) The Division shall review all permit applications for compliance with the rules of this Section and Rule .0203 of this Subchapter. Once an application is complete, the Division shall either issue a notice of intent to deny the permit to the applicant or prepare a draft permit.
- (B) If the Division issues a notice of intent to deny the permit to the applicant, the notice shall include the reasons for permit denial in accordance with Rule .0203(e) of this Subchapter and G.S. 130A-294(a)(4)c.
- (C) If the Division prepares a draft permit, the draft permit shall contain all applicable terms and conditions for the permit.
- (D) All draft permits shall be subject to the procedures of Subparagraphs (3) through (9) of this Paragraph, unless otherwise specified in those Subparagraphs.
- (3) Fact Sheets. The Division shall prepare a fact sheet for every draft permit, and shall send this fact sheet to the applicant and post the fact sheet on the Division website. The fact sheet shall include:
- (A) a description of the type of facility or activity that is the subject of the draft permit;
- (B) a description of the area to be served, the volume and characteristics of the waste stream, and a projection of the useful life of the landfill;
- (C) a summary of the basis for the draft permit conditions, including references to statutory or regulatory provisions and supporting references to the permit application;
- (D) the beginning and ending dates of the comment period under Subparagraph (4) of this Paragraph;
- (E) the address where comments will be received;
- (F) the name, phone number, and e-mail address of a person to contact for additional information;
- (G) the procedures for requesting a public hearing; and
- (H) other procedures by which the public may provide comments during the comment period under Subparagraph (4) of this Paragraph, such as social media or a web-based meeting, if the Division or the applicant elects to use such procedures.
- (4) Public Notice of Permit Actions and Public Hearings.
- (A) The Division shall give public notice of each of the following: a draft permit has been prepared; a public hearing has been scheduled under Subparagraph (6) of this Paragraph; or a notice of intent to deny a permit has been prepared under Part (2)(B) of this Paragraph.
- (B) No public notice is required when a request for a permit modification is denied.
- (C) The Division shall give written notice of denial to the applicant.
- (D) Public notices may describe more than one permit or permit action.
- (E) Public notice of the preparation of a draft permit or a notice of intent to deny a permit shall allow at least 45 days for public comment.
- (F) The Division shall give public notice of a public hearing at least 15 days before the hearing; and the notice shall contain the date, time, and place of the public hearing; a description of the nature and purpose of the public hearing, including the applicable rules and procedures; and a statement of the issues raised by the persons requesting the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.
- (G) Public notice of activities described in Part (A) of this Subparagraph shall be given by publication on the Division website, by posting in the post office and public places of the municipalities nearest the site under consideration, or publication by a local news organization. The Division may also

- provide notice by posting on other State or local government websites or social media to give actual notice of the activities to persons potentially affected.
- (H) All public notices issued under this Subparagraph shall contain the name, address and phone number of the office processing the permit action for which notice is being given; name and address of the owner and the operator applying for the permit; a description of the business conducted at the facility or activity described in the permit application including the size and location of the facility and type of waste accepted; a description of the comment procedures required by Subparagraphs (5) and (6) of this Paragraph, including a statement of procedures to request a public hearing unless a hearing has already been scheduled, and other procedures by which the public may participate in the permit decision; the name, address, and telephone number of the Division contact from whom interested persons may obtain further information; and a description of the time frame and procedure for making an approval or disapproval decision of the application.
- (5) Public Comments and Requests for Public Hearings. During the public comment period provided, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. The Division shall consider all comments in making a final permit decision. The Division shall respond to all comments as provided in Subparagraph (9) of this Paragraph.
- (6) Public Hearings.
- (A) The Division shall hold a public hearing on a draft permit(s) when a hearing is requested. The Division may also hold a public hearing whenever such a hearing might clarify one or more issues involved in the permit decision. Public hearings held pursuant to this Rule shall be at a location accessible to the residents of the municipality closest to the subject facility. Public notice of the hearing shall be given as specified in Subparagraph (4) of this Paragraph.
- (B) Any person may submit oral or written statements and data concerning the draft permit. The Division may set the time allowed for oral statements; and may require the submission of statements in writing. The Division shall extend the public comment period under Subparagraph (4) of this Paragraph to the close of any public hearing under this Subparagraph. The Division may also extend the comment period by so stating at the hearing, when information is presented at the hearing which indicates the importance of extending the period to receive additional comments, to allow potential commenters to gather more information, to allow time for submission of written versions of oral comments made at the hearing, or to allow time for rebuttals of comments made during the hearing. The Division shall publish the end date of the extended comment period on the Division's website prior to the end of the existing public comment period.
- (C) The Division shall make available to the public a recording or written transcript of the hearing upon request.
- (7) Reopening of the Public Comment Period.
- (A) In response to data, information, or arguments received during the public comment period, the Division may prepare a revised draft permit under Subparagraph (2) of this Paragraph; ~~Paragraph~~, prepare a revised fact sheet under Subparagraph (3) of this Paragraph, and reopen or extend the comment period under Subparagraph (4) of this Paragraph.
- (B) Comments filed during the reopened comment period shall be limited to the information that was revised in the draft permit following the original comment period. The public notice shall be in accordance with Subparagraph (4) of this Paragraph and shall define the scope of the reopening.
- (8) Permit Decision.
- (A) After the close of the public comment period under Subparagraph (4) of this Paragraph on a draft permit or a notice of intent to deny a permit, the Division shall issue a permit decision. The Division shall notify the applicant and each person who has submitted a written request for notice of the permit

decision. For the purposes of this Subparagraph, a permit decision means a decision to issue, deny, or modify a permit in accordance with Paragraph (d) of this Rule.

- (B) A permit decision shall become effective upon the date of the service of notice of the decision unless a later date is specified in the decision.

(9) Response to Comments.

- (A) At the time that a permit decision is issued under Subparagraph (8) of this Paragraph, the Division shall issue a response to comments. This response shall specify which provisions, if any, of the draft permit have been changed in the permit decision, and the reasons for the change. The response shall also describe and respond to all comments pertaining to the requirements in the draft permit raised during the public comment period, or during any public hearing.

- (B) The Division shall publish the response to comments on the Division website upon request.

(d) Permit approval or denial. The Division shall review all permit applications in accordance with Rule .0203 of this Subchapter.

*Authority G.S. 130A-294.*

**15A NCAC 13B .1617 APPLICATION REQUIREMENTS FOR MSWLF FACILITIES**

(a) New permit as defined in G.S. 130A-294(a3)(1)a, c, d, and e. An applicant for a new MSWLF permit as defined in G.S. 130A-294(a3)(1)a, c, d, and e shall meet the requirements of Rule .1618 of this Section prior to submitting an application for a permit to construct.

- (1) Permit to Construct. A complete application for a permit to construct for a new permit as defined in G.S. 130A-294(a3)(1)a, c, d, and e shall contain the following:

- (A) a facility plan that describes comprehensive development of the MSWLF facility prepared in accordance with Rule .1619 of this Section;
- (B) an engineering plan that is prepared for the initial phase of landfill development prepared in accordance with Rule .1620 of this Section;
- (C) a construction quality assurance plan prepared in accordance with Rule .1621 of this Section;
- (D) an operation plan prepared in accordance with Rule .1625 of this Section;

- (E) a closure and post-closure plan prepared in accordance with Rule .1629 of this Section;
- (F) the design hydrogeologic report and monitoring plans prepared in accordance with Rule .1623(b) of this Section;
- (G) an environmental compliance history for the applicant in accordance with G.S. 130A-295.3; and
- (H) for an applicant that is not a federal, State, or local government, an organization chart showing the ownership structure of the applicant.

- (2) Permit to Operate. The owner or operator shall meet the pre-operative requirements of the permit to construct to qualify the constructed MSWLF unit for a permit to operate.

(b) New permit as defined in G.S. 130A-294(a3)(1)b. A complete application for a new MSWLF permit as defined in G.S. 130A-294(a3)(1)b shall identify the proposed expansion and shall contain:

- (1) a facility plan that describes the comprehensive development of the MSWLF facility prepared in accordance with Rule .1619 of this Section;
- (2) local government approval in accordance with Rule .1618(c)(6) of this Section;
- (3) information that demonstrates compliance with the rules of this Section;
- (4)~~(3)~~ an environmental compliance history for the applicant in accordance with G.S. 130A-295.3; and
- (5)~~(4)~~ for an applicant that is not a federal, State, or local government, an organization chart showing the ownership structure of the applicant.

(c) Amendment to the permit.

- (1) An application for an amendment to the permit for a subsequent stage of landfill development in accordance with Rule .1603(a)(2)(A) of this Section shall contain the following: contain:
- (A)~~(1)~~ an updated engineering plan prepared in accordance with Rule .1620 of this Section;
- (B)~~(2)~~ an updated construction quality assurance plan prepared in accordance with Rule .1621 of this Section;
- (C)~~(3)~~ an updated operation plan prepared in accordance with Rule .1625 of this Section;
- (D)~~(4)~~ an updated closure and post-closure plan prepared in accordance with Rule .1629 of this Section;
- (E)~~(5)~~ an updated design hydrogeologic report and monitoring plans prepared in accordance with Rule .1623(b) of this Section;

- ~~(F)(6)~~ an updated environmental compliance history for the applicant in accordance with G.S. 130A-295.3; and
  - ~~(G)(7)~~ for an applicant that is not a federal, State, or local government, an updated organization chart showing the ownership structure of the applicant.
- (2) An application for an amendment to the permit for a change in ownership or corporate structure in accordance with Rule .1603(a)(2)(B) of this Section shall contain the following:
- (A) a description of the proposed ownership change including affected facilities and permit numbers, the schedule for the change in ownership or corporate structure, and contact name and information for the applicant;
  - (B) any changes to the facility name, property owner, facility operator, or billing contact names and contact information;
  - (C) if the property owner changes, a copy of the recorded property deed for the new property owner;
  - (D) for an applicant that is not a federal, State, or local government, an organization chart showing the ownership structure of the applicant, which shall be a business entity registered with the NC Secretary of State;
  - (E) an environmental compliance history for the applicant in accordance with G.S. 130A-295.3;
  - (F) any documentation that the Division may request to determine compliance with the requirements for financial responsibility for the applicant in accordance with G.S. 130A-295.2 and Section .1800 of this Subchapter, including an executed financial assurance mechanism for the applicant;
  - (G) any updates to the cost estimates required to be submitted in accordance with Section .1800 of this Subchapter;
  - (H) any modifications to the plans incorporated into the permit if changes are proposed by the applicant, or to correct any information included in the plans that has changed because of the change in ownership or corporate structure, such as the owner or operator names and contact information;
  - (I) for any plans for which no changes or corrections are being made, a statement that the applicant shall

continue to comply with the plans incorporated into the existing permit, which shall be identified in the statement by the date they were incorporated, and the file identification number assigned by the Division to the file containing the incorporated plan;

- (J) copies of any federal, State, or local government permits or approvals that were required for the facility permit approval to operate, and that have been revised because of the change to ownership or corporate structure, or a statement that these documents have not changed; and

- (K) any additional information that the Division may request if it is necessary to determine whether any additional changes to the permit are necessary to comply with the rules of this Section.

(d) Modifications to the permit. The owner or operator may propose to modify plans that were prepared and approved in accordance with the requirements set forth in this Section. A complete application shall identify the requirement(s) proposed for modification and provide information that demonstrates compliance with the rules of this Section.

~~(e) A permit for closure and post closure. An application for closure and post closure shall contain:~~

- ~~(1) an updated engineering plan prepared in accordance with Rule .1620 of this Section;~~
- ~~(2) an updated construction quality assurance plan prepared in accordance with Rule .1621 of this Section;~~
- ~~(3) an updated closure plan and updated post-closure plan prepared in accordance with Rule .1629 of this Section; and~~
- ~~(4) for an applicant that is not a federal, State, or local government, an updated organization chart showing the ownership structure of the applicant.~~

Authority G.S. 130A-294.

### **15A NCAC 13B .1627 CLOSURE AND POST-CLOSURE REQUIREMENTS FOR MSWLF FACILITIES**

(a) Purpose. This Rule shall establish criteria for the closure of all MSWLF units and subsequent requirements for post-closure compliance. The owner or operator shall develop specific plans for the closure and post-closure of the MSWLF facility or units that comply with Rule .1629 of this Section, and submit them to the Division for review and approval.

(b) Scope.

- (1) This Rule shall establish standards for the scheduling and documenting closure of all MSWLF units, and design of the cap system. Construction requirements for the cap system shall incorporate specific requirements from Rule .1624 of this Section.

- (2) This Rule shall establish standards for the monitoring and maintenance of the MSWLF unit(s) following closure.
- (c) Closure criteria.
- (1) An MSWLF unit shall have a cap system installed that shall be designed and constructed to:
- (A) have a permeability less than or equal to the permeability of any base liner system or the in-situ subsoils underlying the landfill, or the permeability specified for the final cover in the effective permit, or a permeability no greater than  $1 \times 10^{-5}$  cm/sec, whichever is less;
- (B) minimize infiltration through the closed MSWLF unit by the use of a low-permeability barrier that contains a minimum 18 inches of earthen material; and
- (C) minimize erosion of the cap system and protect the low-permeability barrier from root penetration by use of an erosion layer that contains no less than six inches of earthen material that is capable of sustaining native plant growth.
- (2) The owner or operator may submit a request for an alternative cap system or alternative post-settlement slopes in the closure and post-closure care plan submitted in accordance with Rule .1629 of the Section. The request shall include a demonstration of the following:
- (A) the alternative cap system will achieve a reduction in infiltration equivalent to or greater than the low-permeability barrier specified in Subparagraph (1) of this Paragraph; and
- (B) the erosion layer will provide protection equivalent to or greater than the erosion layer specified in Subparagraph ~~(3)~~(1) of this Paragraph.
- (3) Construction of the cap system for all MSWLF units shall conform to the requirements set forth in Rule .1624(b)(8), (b)(9), (b)(10), (b)(14), and (b)(15) of this Section and the following requirements:
- (A) post-settlement surface slopes shall be a minimum of five percent and a maximum of 25 percent; and
- (B) a gas venting or collection system shall be installed below the low-permeability barrier to minimize pressures exerted on the barrier.
- (4) Prior to beginning closure of each MSWLF unit as specified in Subparagraph (5) of this Paragraph, an owner or operator shall notify the Division in writing that a notice of the intent to close the unit has been placed in the operating record.
- (5) The owner or operator shall begin closure activities of each MSWLF unit no later than 30 days after the date on which the MSWLF unit receives the known final receipt of wastes or no later than one year after the most recent receipt of wastes, if the MSWLF unit has remaining capacity. Extensions beyond the deadline for beginning closure may be granted by the Division if the owner or operator demonstrates that the MSWLF unit has the capacity to receive additional wastes and the owner or operator has and will continue to prevent threats to human health and the environment from the unclosed MSWLF unit.
- (6) The owner or operator of all MSWLF units shall complete closure activities of each MSWLF unit in accordance with the closure plan within 180 days following the beginning of closure as specified in Subparagraph (5) of this Paragraph. Extensions of the closure period may be granted by the Division if the owner or operator demonstrates that closure will, of necessity, take longer than 180 days and they have and will continue to prevent threats to human health and the environment from the unclosed MSWLF unit.
- (7) Following closure of each MSWLF unit, the owner or operator shall notify the Division that a certification, signed by the project engineer verifying that closure has been completed in accordance with the closure plan, has been placed in the operating record.
- ~~(8)~~ One hundred and eighty days prior to beginning closure of the final permitted MSWLF unit, an owner or operator shall submit to the Division in writing a notice of intent to close the final unit; and place a copy of the notice in the operating record. The notice shall include the anticipated date that the facility will cease waste acceptance, and a statement identifying the plans that were incorporated into the permit that the owner or operator shall comply with during the closure and post-closure care period. The notice shall include the dates that the plans were incorporated into the facility's permit and the file identification numbers that were assigned by the Division to the files containing these plans. If the owner or operator determines that updates or revisions to the plans are necessary, the owner or operator shall submit any changes to the plans to the Division as a permit modification in accordance with Rules .1603(a)(3) and .1617(d) of this Section.
- ~~(9)~~(8) Recordation. Following closure of all MSWLF units, the owner or operator shall record a notice for the landfill facility property at the local county Register of Deeds office; and

notify the Division that the notice has been recorded and a copy has been placed in the operating record. The notice may be a notation on the deed to the landfill facility property, or may be some other instrument such as a declaration of restrictions on the property that is discoverable during a title search for the landfill facility property. The notice shall notify any potential purchaser of the property that the land has been used as a landfill facility and future use is restricted under the closure plan approved by the Division. The owner or operator may request approval from the Division to remove the notice. The Division shall approve removal of the notice if all wastes are removed from the landfill facility property.

(d) Post-closure criteria.

- (1) Following closure of each MSWLF unit, the owner or operator shall conduct post-closure care. Post-closure care shall be conducted for 30 years, except as provided under Subparagraph (2) of this Paragraph, and consist of the following:
  - (A) maintaining the integrity and effectiveness of any cap system, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing rainwater that drains over land from or onto any part of the facility or unit from eroding or damaging the cap system;
  - (B) monitoring the surface water and groundwater in accordance with the requirements of Rules .1623(b)(3)(B) and .1630 through .1637 of this Section, and maintaining the groundwater monitoring system;
  - (C) maintaining and operating the gas monitoring system in accordance with the requirements of Rule .1626 of this Section; and
  - (D) maintaining, operating, and decommissioning the leachate collection system in accordance with the requirements in Rules .1624 and .1626 of this Section. The owner or operator may submit a request to stop managing leachate in writing to the Division. The request shall include a demonstration with supporting documentation that the operation and maintenance of leachate management systems during the active life, closure, and post-closure care period of the MSWLF unit complied with the permit including the plans incorporated into the permit, the rules of this Subchapter, and 15A NCAC

02B and 02L; and that the current and projected volume of leachate generated and the results of leachate sample analysis during the post-closure care period indicate that the leachate no longer poses a threat to human health and the environment. The demonstration shall also include the certifications required by Subparagraph (3) of this Paragraph. The Division shall consider the information required to be submitted in the demonstration and the owner or operator's compliance history to make a determination on approval of the request.

- (2) The length of the post-closure care period may be:
  - (A) decreased by the Division if the owner or operator demonstrates that the reduced period is protective of human health and the environment and this demonstration is approved by the Division; or
  - (B) increased by the Division if the Division determines that the lengthened period is necessary to protect human health and the environment.
- (3) Every five years during the post-closure care period and following completion of the post-closure care period for each MSWLF unit, the owner or operator shall notify the Division that a certification verifying that post-closure care has been conducted in accordance with the post-closure ~~plan~~ plan, has been placed in the operating record. If required by G.S. 89C, the certification shall be signed by a licensed professional engineer.

*Authority G.S. 130A-294.*

**15A NCAC 13B .1631 GROUNDWATER MONITORING SYSTEMS**

(a) A groundwater monitoring system shall be installed that consists of no less than one background and three downgradient wells installed at locations and depths that yield groundwater samples from the uppermost aquifer that:

- (1) Represent the quality of the background groundwater that has not been affected by leakage from the unit. Determination of background groundwater quality shall be based on sampling of a well or wells that are hydraulically upgradient of the waste management area. However, the determination of background water quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

- (A) hydrogeologic conditions do not allow the owner or operator to determine which wells are hydraulically upgradient; ~~or~~
- (B) hydrogeologic conditions do not allow the owner or operator to place a well in a hydraulically upgradient location; or
- (C) sampling at other wells will provide an indication of background groundwater quality that is as representative as that provided by the upgradient well(s); and
- (2) Represent the quality of groundwater passing the relevant point of compliance as approved by the Division. The downgradient monitoring system shall be installed at the relevant point of compliance to ensure detection of groundwater contamination in the uppermost aquifer. The relevant point of compliance shall be established no more than 250 feet from a waste boundary, and shall be at least 50 feet within the facility property boundary. In determining the relevant point of compliance, the Division shall consider recommendations made by the owner or operator based upon consideration of the following factors:
  - (A) the hydrogeologic characteristics of the facility and surrounding land;
  - (B) the volume and physical and chemical characteristics of the leachate;
  - (C) the quantity, quality, and direction of groundwater flow;
  - (D) the proximity and withdrawal rate of the groundwater users;
  - (E) the availability of alternative drinking water supplies;
  - (F) the existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater, and whether the groundwater is currently used or expected to be used for drinking water;
  - (G) any potential effects on public health, safety, and welfare; and
  - (H) practicable capability of the owner or operator.
- (b) Monitoring wells shall be designed and constructed in accordance with 15A NCAC 02C.
  - (1) Owner or operators shall obtain approval from the Division for the design, installation, development, and decommission of any monitoring well or piezometer. Documentation shall be placed in the operating record and provided to the Division in a timely manner.
  - (2) The monitoring wells and piezometers shall be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.
- (c) The number, spacing, and depths of monitoring systems shall be determined based upon site-specific technical information that shall include investigation of:
  - (1) aquifer thickness; groundwater flow rate; groundwater flow direction; and seasonal and temporal fluctuations in groundwater flow and water table; and
  - (2) unsaturated and saturated geologic units and any fill materials within the uppermost aquifer; including thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities, and effective porosities.
- (d) The proposed monitoring system and the water quality monitoring plan required in Paragraph (f) of this Rule shall be capable of providing detection of any release of monitored constituents from any point in a disposal cell or leachate surface impoundment to the uppermost aquifer. If required by G.S. 89C or 89E, the proposed monitoring system and water quality monitoring plan shall be certified by a licensed professional engineer or a licensed geologist.
- (e) In addition to groundwater monitoring wells, the use of alternative monitoring systems may be:
  - (1) required by the Division at sites where the owner or operator does not control the property from any landfill unit to the groundwater discharge feature(s); or
  - (2) allowed by the Division at sites where hydrogeologic conditions are favorable for detection monitoring by alternative methods.
- (f) The owner or operator shall submit a water quality monitoring plan for review and approval by the Division as required by Rules .1603 and .1617 of this Section. The water quality monitoring plan ~~Water Quality Monitoring Plan~~ shall contain information on the groundwater monitoring system(s) and locations, surface water sampling locations, sampling and analysis requirements, and monitoring required under Rules .1630 through .1637 of this Section. The Division shall date and stamp the water quality monitoring plan ~~Water Quality Monitoring Plan~~ "approved" if the plan meets the conditions of this Rule. Upon approval by the Division, a copy of the approved water quality monitoring plan ~~Water Quality Monitoring Plan~~ shall be placed in the operating record.
- (g) Groundwater quality standards ~~and interim maximum allowable concentrations~~ established under 15A NCAC 02L or groundwater protection standards established in accordance with Rule .1634(b) of this Section shall not be exceeded in the uppermost aquifer at the compliance boundary.

*Authority G.S. 130A-294.*

**15A NCAC 13B .1632 GROUNDWATER SAMPLING AND ANALYSIS REQUIREMENTS**

- (a) The owner or operator shall describe consistent sampling and analysis procedures designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells in the water quality monitoring plan approved in accordance with Rule .1631(f) of this

Section. The plan shall include procedures and techniques for sample collection; sample preservation and shipment; analytical procedures; chain of custody control; and quality assurance and quality control.

(b) The groundwater monitoring program shall include sampling and analytical methods for groundwater sampling that measure monitored constituents and other monitoring parameters in groundwater samples.

(c) The sampling procedures and frequency shall be protective of human health and the environment.

(d) Each time groundwater is sampled, groundwater elevations shall be measured in each well prior to purging. The owner or operator shall determine the rate and direction of groundwater flow each time groundwater is sampled. Groundwater elevations in wells that monitor the same waste management area shall be measured within a 24-hour period of time to avoid temporal variations in groundwater flow that could preclude accurate determination of groundwater flow rate and direction. The owner or operator shall determine groundwater elevation and flow as follows:

- (1) To determine accurate groundwater elevations for each monitoring well, the wells shall have been surveyed. If required by G.S. 89C, a licensed professional land surveyor shall survey the wells. [Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via a letter dated July 16, 2010, that the surveying pursuant to this Paragraph constitutes practicing surveying under G.S. 89C.] The survey of the wells shall conform to the following levels of accuracy:
  - (A) the horizontal location to the nearest 0.1 foot;
  - (B) the vertical control for the ground surface elevation to the nearest 0.01 foot; and
  - (C) the vertical control for the measuring reference point on the top of the inner well casing to the nearest 0.01 foot.
- (2) To determine the rate of groundwater flow, the owner or operator shall provide data for hydraulic conductivity and porosity for the formation materials at each of the well locations.

(e) The owner or operator shall establish background groundwater quality in accordance with Rule .1631(a)(1) of this Section and Paragraphs (f) through (h) of this Rule for each of the monitoring parameters or constituents required in the particular groundwater monitoring program that applies to the MSWLF unit.

(f) The number of samples collected to establish groundwater quality data shall be consistent with the statistical procedures to be used, as provided for in Paragraph (g) of this Rule.

(g) Should the owner or operator choose to perform statistical analysis of groundwater quality data for the purpose of establishing background concentrations or to determine if there is an exceedance of the groundwater quality standards ~~and interim maximum allowable concentrations (IMACs)~~ established in 15A NCAC 02L or the groundwater protection standard established in Rule .1634(b) of this Section, the owner or operator shall select

one of the following statistical methods to be used in evaluating groundwater monitoring data for each constituent of concern. The statistical test chosen shall be conducted separately for each constituent of concern in each well.

- (1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.
  - (2) A parametric analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.
  - (3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.
  - (4) A control chart approach that gives control limits for each constituent.
  - (5) Another statistical test method that meets the performance standards of this Rule. The owner or operator shall submit a justification for an alternative test method to the Division for approval to determine compliance with this Rule. The justification shall demonstrate that the alternative statistical test method meets the performance standards of this Rule. If approved, the owner or operator shall place a copy of the justification for an alternative test method in the operating record.
- (h) Any statistical method chosen to evaluate groundwater monitoring data shall comply with the following performance standards:
- (1) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or constituents of concern. If the distribution of the chemical parameters or constituents of concern is shown by the owner or operator, or by the Division, to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free theory test shall be used. If the distributions for the constituents differ, more than one statistical method shall be considered.
  - (2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a



Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons shall be maintained. This performance standard shall not apply to tolerance intervals, prediction intervals, or control charts.

- (3) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined by the analyst after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.
- (4) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval shall contain, shall be protective of human health and the environment. These parameters shall be determined by the analyst after considering the number of samples in the background database, the data distribution, and the range of the concentration values for each constituent of concern.
- (5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.
- (6) If necessary, as provided for in 40 CFR 258, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(i) Within 120 days from the date of sampling or as specified in the facility permit, whichever is less, the owner or operator shall submit to the Division a monitoring report in an electronic format that is accessible and viewable by the Division that includes information from the sampling event including field observations relating to the condition of the monitoring wells, field data, the laboratory analytical data report, statistical analysis (if utilized), field sampling methods and quality assurance and quality control data, information on groundwater flow direction, groundwater flow rate, and, for each well, any constituents that exceed groundwater quality standards and IMACs set forth in 15A NCAC 02L .0202 or the groundwater protection standards established in Rule .1634(b) of this Section.

*Authority G.S. 130A-294.*

### **15A NCAC 13B .1633 DETECTION MONITORING PROGRAM**

(a) Detection monitoring shall be conducted at MSWLF units at all groundwater monitoring wells that are part of the detection monitoring system as established in the approved water quality monitoring plan. As provided for in 40 CFR 258, the detection monitoring program shall include monitoring for the constituents listed in Appendix I of 40 CFR 258.

(b) The monitoring frequency for all Appendix I detection monitoring constituents shall be no less than semiannual during the active life of the facility and during closure and the post-closure period. To establish the baseline, no less than four independent samples from each background and downgradient monitoring well shall be collected within a six-month period and analyzed for constituents listed in Appendix I of 40 CFR 258, with no less than one sample collected from each new monitoring well before waste placement in each new cell or phase. No less than one sample from each background and downgradient monitoring well shall be collected and analyzed during subsequent semiannual sampling events.

(c) The Division may approve an alternate frequency, no less than annually, for repeated sampling and analysis for constituents required by Paragraph (b) of this Rule, during the active life and post-closure care of the unit considering the following factors:

- (1) lithology of the aquifer and unsaturated zone;
- (2) hydraulic conductivity of the aquifer and unsaturated zone;
- (3) groundwater flow rates;
- (4) minimum distance between the upgradient edge of the MSWLF unit and the downgradient monitoring well screened interval;
- (5) resource value of the aquifer; and
- (6) nature, fate, and transport of any detected constituents.

(d) If the owner or operator determines that there is an exceedance of the groundwater quality standards ~~or interim maximum allowable concentrations (IMACs)~~ established in accordance with 15A NCAC 02L .0202, or the groundwater protection standards established in accordance with Rule .1634(b) of this Section for one or more of the constituents required to be monitored in Paragraph (a) of this Rule at any monitoring well, the owner or operator:

- (1) shall, within 14 days of this determination, report to the Division and place a notice in the operating record indicating which constituents have exceeded groundwater quality standards ~~or IMACs~~ established in accordance with 15A NCAC 02L .0202, or the groundwater protection standards established in accordance with Rule .1634(b) of this Section;
- (2) shall establish an assessment monitoring program meeting the requirements of Rule .1634 of this Section within 90 days except as provided for in Subparagraph (3) of this Paragraph; and
- (3) may demonstrate that a source other than a MSWLF unit caused the exceedance, or the

exceedance resulted from an error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. A report documenting this demonstration shall be submitted to the Division for approval. If required by G.S. 89C or G.S. 89E, a licensed professional engineer or licensed geologist shall prepare these documents. [Note: The North Carolina Board of Examiners for Engineers and Surveyors and the Board of Licensing of Geologist has determined, via letters dated July 16, 2010 and November 30, 2010 respectively, that preparation of documents pursuant to this Paragraph constitutes practicing engineering or geology under G.S. 89C and G.S. 89E.] A copy of this report shall also be placed in the operating record. If a successful demonstration is made, documented, and approved by the Division, the owner or operator may continue detection monitoring. If after 90 days, a successful demonstration is not made, the owner or operator shall initiate an assessment monitoring program as required by Rule .1634 of this Section.

*Authority G.S. 130A-294.*

**15A NCAC 13B .1634 ASSESSMENT MONITORING PROGRAM**

(a) Assessment monitoring shall be required if, in any sampling event, one or more constituents listed in 40 CFR 258 Appendix I is detected above the groundwater quality standards ~~or interim maximum allowable concentrations (IMACs)~~ established in accordance with 15A NCAC 02L .0202, or the groundwater protection standards established in accordance with Paragraph (b) of this Rule.

(b) Assessment Requirements. Within 90 days of triggering an assessment monitoring program in accordance with Rule .1633(d)(2) of this Section, the owner or operator shall conduct an assessment in accordance with the following:

- (1) Install additional wells downgradient of the compliance wells where exceedances have been detected to characterize the nature and extent of the contamination. The additional wells shall include no less than one additional groundwater monitoring well at the facility's property boundary or the compliance boundary, as defined in 15A NCAC 02L .0102, in the direction of contaminant migration most likely to show impact based on the established geology and hydrogeology.
- (2) Collect no less than one groundwater sample from each downgradient monitoring well, including any well installed in accordance with Subparagraph (1) of this Paragraph, and analyze for the constituents listed in 40 CFR 258 Appendix II. The Division may remove any of the 40 CFR 258 Appendix II constituents, not

also listed in Appendix I, from the monitoring list for a MSWLF unit if the owner or operator can show that the constituents proposed for removal are not expected to be in or derived from the waste contained in the unit. After the initial sampling event, for any constituent detected in the downgradient wells as a result of the Appendix II analysis, no less than three additional independent samples from each downgradient monitoring well and no less than four independent samples from each background well shall be collected and analyzed to establish a baseline for the new detected constituents. Once determined, baseline data for the new detected constituents shall be reported to the Division.

(3) For constituents that do not have a groundwater quality standard ~~or IMAC~~ established in accordance with 15A NCAC 02L .0202, the Division shall establish a groundwater protection standard for each constituent detected in groundwater. The groundwater protection standard shall be the most protective of the following:

- (A) for constituents for which a maximum contaminant level (MCL) has been promulgated under 40 CFR 141, the MCL for that constituent;
- (B) for constituents for which a public water quality standard has been established under 15A NCAC 18C, the public water quality standard for that constituent; or
- (C) for constituents for which no MCLs or public water quality standards have been promulgated, the background concentration for the constituent established from the monitoring wells required in accordance with Rules .1631(a)(1) and .1632 of this Section.

(4) The Division may establish an alternative groundwater protection standard for constituents for which no MCL or public water quality standard have been established. These groundwater protection standards shall be health-based levels that satisfy the following criteria:

- (A) the level is derived in a manner consistent with U.S. E.P.A. guidelines provided in 40 CFR 258.55(i)(1) for assessing the health risks of environmental pollutants;
- (B) the level is based on scientifically valid studies conducted in accordance with 40 CFR 792;
- (C) for carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level due to

continuous lifetime exposure of  $1 \times 10^{-6}$ ; and

- (D) for systemic toxicants, the level represents a concentration to which the human population, including sensitive subgroups, could be exposed on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For the purposes of this Rule, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

- (5) In establishing groundwater protection standards under this Paragraph, the Division shall consider the following:
  - (A) multiple contaminants in the groundwater;
  - (B) exposure threats to sensitive environmental receptors; and
  - (C) other site-specific exposure or potential exposure to groundwater.
- (6) The owner or operator may request that the Division approve a background level for the unit that is higher than the groundwater quality standard ~~or IMAC~~ established in 15A NCAC 02L .0202 or the groundwater protection standard established in Subparagraph (3) or (4) of this Paragraph. The background level shall be established in accordance with Rule .1632(e) of this Section. The approved background level shall be the established groundwater protection standard.

(c) Assessment Monitoring. After obtaining the results from the initial sampling event required in Subparagraph (b)(2) of this Rule, the owner or operator shall perform assessment monitoring in accordance with the following:

- (1) For each assessment monitoring event, the owner or operator shall submit a monitoring report to the Division as required by Rule .1632(i) of this Section and, if required by G.S. 89E, the report shall be certified by a licensed geologist. Any monitoring report submitted during assessment shall contain a summary description of assessment activities conducted in accordance with Paragraph (b) of this Rule that have not previously been reported to the Division, including boring logs and well installation records.
- (2) Within 30 days of obtaining the results of the sampling event, the owner or operator shall notify all persons who own land or reside on land that overlies any part of the plume of contamination if contaminants have migrated off-site.
- (3) Within 14 days of receipt of the analytical results, the owner or operator shall submit notice to the Division in writing and place the notice in the operating record identifying the 40

CFR 258 Appendix II constituents that have not previously been detected and reported to the Division.

- (4) Within 90 days, and no less than semiannually thereafter until the Division approves a return to detection monitoring in accordance with Paragraph (e) of this Rule, the owner or operator shall sample all of the monitoring wells for the unit in the monitoring system established in Rule .1633 of this Section and in Subparagraph (b)(1) of this Rule for all constituents listed in 40 CFR 258 Appendix I, and for those constituents in Appendix II not listed in Appendix I that have been detected. Any well with a reported groundwater standard exceedance shall be sampled for all constituents in 40 CFR 258 Appendix II no less than annually unless otherwise approved in accordance with Subparagraph (6) of this Paragraph or Subparagraph (b)(2) of this Rule. A report from each sampling event shall be submitted to the Division and placed in the facility operating record. No less than one sample from each background and downgradient monitoring well shall be collected and analyzed during each of these sampling events.
- (5) The owner or operator shall establish and report to the Division the background or baseline concentrations for any constituents detected.
- (6) The Division may approve an alternate frequency, no less than annually, or an alternate subset of wells for repeated sampling and analysis for constituents required by Paragraph (b) of this Rule, during the active life and post-closure care of the unit considering the following factors:
  - (A) lithology of the aquifer and unsaturated zone;
  - (B) hydraulic conductivity of the aquifer and unsaturated zone;
  - (C) groundwater flow rates;
  - (D) minimum distance between the upgradient edge of the MSWLF unit and the downgradient monitoring well screened interval;
  - (E) resource value of the aquifer; and
  - (F) nature, fate, and transport of any detected constituents.

(d) During assessment monitoring, the owner or operator may demonstrate, in accordance with Rule .1633(d)(3) of this Section for any constituent not previously reported to have a groundwater standard exceedance, that a source other than a MSWLF unit caused the exceedance of the groundwater quality standards ~~and IMACs~~ established in accordance with 15A NCAC 02L .0202 or the groundwater protection standards established in accordance with Paragraph (b) of this Rule, or that the exceedance resulted from error in sampling, analysis, or natural variation in groundwater quality. If a successful demonstration is made for

each exceedance, the owner or operator shall continue the existing assessment monitoring that was required by Paragraph (c) of this Rule unless and until the requirements of Paragraph (e) of this Rule are met.

(e) The Division shall give approval to the owner or operator to return to detection monitoring in accordance with Rule .1633 of this Section if all of the following are met:

- (1) for two consecutive sampling events, the concentrations of the constituents are shown to be at or below groundwater quality standards ~~and IMACs~~ established in 15A NCAC 02L .0202, or the groundwater protection standards established in accordance with Paragraph (b) of this Rule;
- (2) the plume is not migrating horizontally or vertically; and
- (3) the plume has not exceeded the compliance boundary.

(f) If one or more Appendix II constituents are detected for two consecutive sampling events above background, the groundwater quality standards ~~and IMACs~~ established in 15A NCAC 02L .0202, or the groundwater protection standards established in accordance with Paragraph (b) of this Rule, the owner or operator shall initiate assessment of corrective measures in accordance with Rule .1635 of this Section.

*Authority G.S. 130A-294.*

#### **15A NCAC 13B .1635 ASSESSMENT OF CORRECTIVE MEASURES**

(a) Within 90 days of finding that one or more Appendix II constituents exceeded, for two consecutive sampling events, either the groundwater quality standards ~~or IMACs~~ established in 15A NCAC 02L .0202, the groundwater protection standards established in accordance with Rule .1634(b) of this Section, or an approved background value, the owner or operator shall initiate assessment of corrective action measures. Such an assessment shall be completed within 120 days.

(b) The owner or operator shall continue to monitor in accordance with the approved assessment monitoring program.

(c) The owner or operator shall analyze the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under Rule .1636 of this Section. The owner or operator shall address the following, as provided for in 40 CFR 258:

- (1) the performance, reliability, ease of implementation, and potential impacts of potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;
- (2) the time required to begin and complete the remedy;
- (3) the costs of remedy implementation; and
- (4) the institutional requirements such as State and local permit requirements or other environmental or public health requirements that may affect implementation of the remedy(s).

(d) Within 120 days of completion of the assessment of corrective measures as set forth in Paragraph (a) of this Rule and prior to the selection of a remedy, the owner or operator shall discuss the results of the assessment of corrective ~~measures~~ measures, in a public meeting with interested and affected parties. The owner or operator shall provide a public notice of the meeting at least 30 days prior to the meeting. The notice shall include the time, place, date, and purpose of the public meeting. A copy of the public notice shall be forwarded to the Division at least five days prior to publication. Public notice shall be provided to interested and affected parties by the following methods:

- (1) publication on the owner or operator's official business website and social media websites;
- (2) posting in the post office and public places of the municipalities nearest the site under consideration, or on the websites of these public places;
- (3) a news release by a local news organization serving the county where the site under consideration is located; and
- (4) to persons requesting notification, sending to the mailing address or e-mail address provided by those persons.

*Authority G.S. 130A-294.*

#### **15A NCAC 13B .1636 SELECTION OF REMEDY**

(a) Based on the results of the assessment of corrective measures in accordance with Rule .1635 of this Section, the owner or operator shall select a remedy ~~that that~~ meets the standards listed in Paragraph (b) of this Rule. Within 14 days of selecting a remedy, the permittee shall submit an application to modify the permit describing the selected remedy to the Division for review and approval that the remedy complies with this Rule. The application shall be subject to the processing requirements set forth in Rule .1603(c) of this Section. The application shall include the demonstrations necessary to comply with the financial assurance requirements set forth in Rule .1628 of this Section and Section .1800 of this Subchapter.

(b) Remedies shall:

- (1) be protective of human health and the environment;
- (2) attain the approved groundwater quality standards ~~and IMACs~~ established in accordance with 15A NCAC 02L .0202, or the groundwater protection standards established in accordance with Rule .1634(b) of this Section;
- (3) control the source(s) of releases to reduce or eliminate, to the maximum extent practicable, further releases of 40 CFR 258 Appendix II constituents into the environment; and
- (4) comply with standards for management of wastes as specified in Rule .1637(e) of this Section.

(c) In selecting a remedy that meets the standards of Paragraph (b) of this Rule, the owner or operator shall consider the following factors:

- (1) The long-term and short-term effectiveness and protectiveness of the potential remedy(s), along

- with the degree of certainty that the remedy will prove successful based on consideration of the following:
- (A) magnitude of reduction of existing risks;
  - (B) magnitude of residual risks in terms of likelihood of further releases due to wastes remaining following implementation of a remedy;
  - (C) the type and degree of long-term management required, including monitoring, operation, and maintenance;
  - (D) short-term risks that might be posed to the community, to workers, or to the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal or containment;
  - (E) time until full protection is achieved;
  - (F) potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;
  - (G) long-term reliability of the engineering and institutional controls; and
  - (H) potential need for replacement of the remedy.
- (2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the extent to which containment practices will reduce further releases, and the extent to which treatment technologies may be used.
  - (3) The ease or difficulty of implementing a potential remedy based on consideration of the following types of factors:
    - (A) the degree of difficulty associated with constructing the technology;
    - (B) the expected operational reliability of the technologies;
    - (C) the need to coordinate with and obtain necessary approvals and permits from other agencies;
    - (D) the availability of necessary equipment and specialists; and
    - (E) the available capacity and location of needed treatment, storage, and disposal services.
  - (4) The practicable capability of the owner or operator, including a consideration of the technical and economic capability.
  - (5) The degree to which community concerns are addressed by a potential remedy.
- (d) The owner or operator shall specify as part of the selected remedy a schedule for initiating and completing remedial activities. This schedule shall be submitted to the Division for review and approval to determine compliance with this Rule. The owner or operator shall consider the following factors in determining the schedule of remedial activities:
- (1) nature and extent of contamination;
  - (2) practical capabilities of remedial technologies in achieving compliance with the approved groundwater protection standards and other objectives of the remedy;
  - (3) availability of treatment or disposal capacity for wastes managed during implementation of the remedy;
  - (4) desirability of utilizing technologies that are not currently available, but which may offer advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;
  - (5) potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;
  - (6) resource value of the aquifer including:
    - (A) current and future uses;
    - (B) proximity and withdrawal rate of users;
    - (C) groundwater quantity and quality;
    - (D) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to contaminants;
    - (E) the hydrogeologic characteristics of the facility and surrounding land;
    - (F) groundwater removal and treatment costs; and
    - (G) the costs and availability of alternative water supplies; and
  - (7) practical capability of the owner or operator.
- (e) The Division may determine that active remediation of a release of a 40 CFR 258 Appendix II constituent from a MSWLF unit is not necessary if the owner or operator demonstrates to the Division that:
- (1) the groundwater is contaminated by substances that have originated from a source other than a MSWLF unit and those substances are present in concentrations such that active cleanup of the release from the MSWLF unit would provide no reduction in risk to actual or potential receptors; or
  - (2) the constituent or constituents are present in groundwater that:
    - (A) is not currently or expected to be a source of drinking water; and
    - (B) is not hydraulically connected with water to which the constituents are migrating or are likely to migrate in concentrations that would exceed the

- approved groundwater protection standards; or
- (3) remediation of the releases is technically impracticable; or
- (4) remediation results in unacceptable cross-media impacts.

(f) A determination by the Division pursuant to Paragraph (e) of this Rule shall not affect the authority of the State to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to groundwater, to prevent exposure to groundwater, or to remediate groundwater to concentrations that are technically practicable and reduce threats to human health or the environment.

*Authority G.S. 130A-294.*

### **15A NCAC 13B .1637 IMPLEMENTATION OF THE CORRECTIVE ACTION PROGRAM**

(a) Based on the approved schedule for initiation and completion of remedial activities, the owner or operator shall:

- (1) within 120 days after the approval of the selected remedy or as approved by the Division, submit a corrective action plan that establishes and implements a corrective action groundwater monitoring program that:
  - (A) meets the requirements of an assessment monitoring program under Rule .1634 of this Section;
  - (B) indicates the effectiveness of the corrective action remedy; and
  - (C) demonstrates compliance with groundwater quality standards ~~and interim maximum allowable concentrations (IMACs)~~ established in accordance with 15A NCAC 02L .0202 or the groundwater protection standards established in accordance with Rule .1634(b) of this Section pursuant to Paragraph (f) of this Rule.
- (2) implement the approved corrective action remedy; and
- (3) take any interim measures necessary to ensure the protection of human health and the environment. Interim measures shall be consistent with the objectives of and contribute to the performance of any remedy that may be required. The following factors shall be considered by an owner or operator in determining whether interim measures are necessary:
  - (A) the time required to develop and implement a final remedy;
  - (B) actual or potential exposure of nearby populations or environmental receptors to constituents of concern;
  - (C) actual or potential contamination of drinking water supplies or sensitive ecosystems;

- (D) further degradation of the groundwater that may occur if remedial action is not initiated;
- (E) weather conditions that may cause constituents of concern to migrate or be released;
- (F) risks of fire or explosion, or potential for exposure to constituents of concern resulting from an accident or failure of a container or handling system; and
- (G) other situations that may pose threats to human health or the environment.

(b) The owner or operator shall submit a corrective action evaluation report to the Division in an electronic format that is accessible and viewable by the Division no less than once every five calendar years until the owner or operator are released from the corrective action program in accordance with Paragraph (g) of this Rule. The report shall contain a description of the corrective measure remedies that have been implemented or completed since the initiation of the corrective action program; and an evaluation of the effectiveness of the corrective action program. The owner or operator may request to submit the corrective action evaluation report ~~Corrective Action Evaluation Report~~ to the Division on an alternate schedule. The owner or operator shall submit the request in writing to the Division, and the request shall include a justification for the alternate schedule. In making the determination on approval of the request, the Division shall consider the following factors:

- (1) the schedules for corrective action established in the corrective action plan ~~Corrective Action Plan~~ and changes to corrective actions;
- (2) the justification submitted by the owner or operator;
- (3) the size, direction, and rate of travel of the contaminant plume;
- (4) the circumstances and use of properties, groundwater, and surface water downgradient of the contaminant plume; and
- (5) whether the alternate schedule complies with Article 9 of Chapter 130A of the General Statutes and the rules adopted thereunder.

(c) The owner or operator or the Division may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of Rule .1636(b) of this Section are not being achieved through the remedy selected. In such cases, the owner or operator shall implement other methods or techniques to comply with Rule .1636 of this Section unless the Division determines that active remediation is not necessary in accordance with Rule .1636(e) of this Section.

(d) If the owner or operator or the Division determines that compliance with requirements under Rule .1636(b) of this Section cannot be achieved with any currently available methods, the owner or operator shall:

- (1) submit a written report that documents that compliance with the requirements under Rule .1636(b) of this Section cannot be achieved with any currently available methods and gain approval from the Division. If required by G.S.

89C or G.S. 89E, a licensed professional engineer or licensed geologist shall prepare these documents. [Note: The North Carolina Board of Examiners for Engineers and Surveyors and the Board of Licensing of Geologist has determined, via letters dated July 16, 2010 and November 30, 2010, that preparation of documents pursuant to this Paragraph constitutes practicing engineering or geology under G.S. 89C and G.S. 89E.];

- (2) implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; ~~and~~
- (3) implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are technically practicable and consistent with the overall objective of the remedy; and
- (4) submit a report justifying the alternative measures to the Division for review. The Division shall date and stamp the report "approved" if the conditions of this Paragraph are satisfied. The approved report shall be placed in the operating record prior to implementing the alternative measures.

(e) All solid wastes that are managed pursuant to a remedy required under Rule .1636 of this Section, or an interim measure required under Paragraph (a) of this Rule, shall be managed in a manner that is protective of human health and the environment; and that complies with applicable Resource Conservation and Recovery Act requirements.

(f) Remedies selected pursuant to Rule .1636 of this Section shall be considered complete when:

- (1) the owner or operator complies with the groundwater quality and groundwater protection standards at all points within the plume of contamination that lie beyond the relevant point of compliance;
- (2) compliance with the groundwater quality standards ~~and IMACs~~ established in accordance with 15A NCAC 02L .0202 or the groundwater protection standards established in accordance with Rule .1634(b) of this Section has been achieved by demonstrating that concentrations of 40 CFR 258 Appendix II constituents have not exceeded these standards for a period of three consecutive years, consistent with performance standards in Rule .1636(b) of this Section; and
- (3) all actions required to complete the remedy have been satisfied.

(g) Upon completion of the remedy, the owner or operator shall submit a report to the Division documenting that the remedy has been completed in compliance with Paragraph (f) of this Rule. This report shall be signed by the owner or operator and by the preparer of the report. If required by G.S. 89C or G.S. 89E, a licensed professional engineer or licensed geologist shall prepare

these documents. [Note: The North Carolina Board of Examiners for Engineers and Surveyors and the Board of Licensing of Geologist has determined, via letters dated July 16, 2010 and November 30, 2010, that preparation of documents pursuant to this Paragraph constitutes practicing engineering or geology under G.S. 89C and G.S. 89E.] Upon approval by the Division, this report shall be placed in the operating record.

(h) When, upon completion of the certification, the Division determines that the corrective action remedy has been completed in accordance with Paragraph (f) of this Rule, the owner or operator shall be released from the requirements for financial assurance for the corrective action program under Rule .1628 of this Section and Section .1800 of this Subchapter. Nothing in this Paragraph shall release the owner or operator from the requirements for financial assurance for closure, post-closure care, or potential assessment and corrective action in accordance with Rule .1628 of this Section and Section .1800 of this Subchapter.

*Authority G.S. 130A-294.*

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## TITLE 19A – DEPARTMENT OF TRANSPORTATION

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Transportation intends to amend the rule cited as 19A NCAC 02D .0803.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://www.ncdot.gov/about-us/how-we-operate/policy-process/rules/Pages/default.aspx>

**Proposed Effective Date:** August 1, 2022

**Public Hearing:**

**Date:** May 25, 2022

**Time:** 10:00 a.m.

**Location:** Virtual Meeting using a computer, tablet or smartphone:

<https://attendee.gotowebinar.com/register/1023292804126021131>

*After registering, you will receive a confirmation email containing information about joining the webinar.*

*If no computer access, please call in to the meeting at 1-562-247-8422 and use Access Code: 422-111-975.*

**Reason for Proposed Action:** NCDOT is proposing to amend 19A NCAC 02D .0803 to reflect a process change on the requirements to bid on federal and state funded highway/bridge construction projects.

*Historically, the Department has required prospective bidders who wish to bid on highway/bridge construction projects to purchase specific documents for a fee of \$25 for proposals, \$40 for half size project plans, or \$100 for full size plans. The Department is enhancing the technology used in the bidding process and is eliminating or reducing the current expenses associated with bidding on NCDOT highway/bridge construction projects while maintaining the same level of communication and*

customer service. This necessitates a change to 19A NCAC 02D .0803.

*In the future, prime contractors and subcontractors will be able to bid on projects without being required to purchase plans or proposals. This process change will reduce a financial burden on the regulated public and its financial impact to the Department is not substantial.*

*The agency's overall yearly budget is \$6 billion. Any loss in revenue will, in turn, be a reduction in paper, toner, and wear and tear on equipment due to reduced printing requirements. The Department will break even in any reduction in purchasing of bid documents due to purchases being processed at cost. The Department does not expect the revenue to move from an average of \$121,416 to \$0 as there will continue to be an option for contractors to purchase proposals and plans through NCDOT.*

**Comments may be submitted to:** Hannah Jernigan, NC Department of Transportation 1501 Mail Service Center, Raleigh, NC 27699-1501; email Rulemaking@ncdot.gov

**Comment period ends:** June 17, 2022

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- ☐ State funds affected
- ☐ Local funds affected
- ☐ Substantial economic impact ( $\geq$  \$1,000,000)
- ☒ Approved by OSBM

☒ No fiscal note required

## CHAPTER 02 - DIVISION OF HIGHWAYS

### SUBCHAPTER 02D - HIGHWAY OPERATIONS

#### SECTION .0800 - PREQUALIFICATION: ADVERTISING AND BIDDING REGULATIONS

##### 19A NCAC 02D .0803 ADVERTISEMENT AND INVITATIONS FOR BIDS

(a) All projects shall be advertised in daily newspapers throughout the state prior to the bid ~~opening~~, opening as set forth in G.S. 136-28.1 and 143-129.

(b) On the date of advertisement, an invitation to bid shall be made available to interested parties on the Department's ~~web site~~, website at connect.ncdot.gov/letting.

(c) The invitation to bid shall indicate the contract identification number and description of the projects to be ~~let~~, let to contract, a general summary of the items and approximate quantities of work to be performed, and the time and place for the public opening and reading of the bids received. Information concerning the cost and the availability of bid documents shall also be provided in the invitation to bid.

(d) Prospective bidders who desire to bid on projects identified in the invitation to bid shall ~~purchase~~ be added to the Authorized Bidders List. The Authorized Bidder's List is composed of contractors that are prequalified bidders as set forth in Rule .0801 of this Section that have also added themselves to the Interested Parties List found on the Department's website at connect.ncdot.gov/letting. the project specific bid documents from the Department containing information necessary to submit the bid. Other interested parties may also purchase project specific bid documents from the Department. Documents may be purchased at cost from the Department.

(e) Authorized bidders shall sign up for the Interested Parties List to receive letting information by:

- (1) visiting connect.ncdot.gov/letting;
- (2) clicking on the "Interested Parties" link;
- (3) entering a firm name;
- (4) entering a contact name; and
- (5) entering an email address for the contact.

Authority G.S. 136-28.1; 143-129.



*This Section contains information for the meeting of the Rules Review Commission March 17, 2022 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 984-236-1850. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS****Appointed by Senate**

Jeanette Doran (Chair)  
Robert A. Bryan, Jr. (2<sup>nd</sup> Vice Chair)  
Margaret Currin  
Jeff Hyde  
Robert A. Rucho

**Appointed by House**

Andrew P. Atkins (1st Vice Chair)  
Wayne R. Boyles, III  
Barbara A. Jackson  
Randy Overton  
Paul Powell

**COMMISSION COUNSEL**

Brian Liebman	984-236-1948
Lawrence Duke	984-236-1938
William W. Peaslee	984-236-1939

**RULES REVIEW COMMISSION MEETING DATES**

April 21, 2022	June 16, 2022
May 19, 2022	July 21, 2022

**RULES REVIEW COMMISSION MEETING****MINUTES****March 17, 2022**

The Rules Review Commission met on Thursday, March 17, 2022, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx.

Commissioners Andrew Atkins, Wayne R. Boyles III, Bobby Bryan, Jeanette Doran, Randy Overton, and Bob Rucho were present in the Commission Room. Commissioners present via WebEx were Margaret Currin, Jeff Hyde, Barbara Jackson, and Paul Powell.

Staff members Alexander Burgos; Commission Counsel Lawrence Duke, Amber May, and Bill Peaslee were present in the room. Commission Counsel Brian Liebman was present via WebEx.

The meeting was called to order at 9:00 a.m. with Chair Doran presiding.

The Chair read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearance of conflicts of interest.

The Chair introduced new Commission Counsel, Bill Peaslee, to the Commission.

**APPROVAL OF MINUTES**

The Chair asked for any discussion, comments, or corrections concerning the minutes of the February 17, 2022, meeting. There were none and the minutes were approved as distributed.

Upon the call of the Chair, the meeting minutes were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Wayne R. Boyles III, Bobby Bryan, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

**FOLLOW UP MATTERS****Environmental Management Commission**

Upon the call of the chair, 15A NCAC 02L .0202 was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Margaret Currin, Wayne R. Boyles III, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

**Marine Fisheries Commission**

Upon the call of the chair, 15A NCAC 03I .0108, .0115, .0122; 03J .0103, .0104, .0106, .0111, .0202, .0208, .0401, .0402; 03L .0207, .0210, .0301, .0302; 03M .0301, .0302, .0511, .0516, .0519; 18A .0134, .0136, .0137, .0138, .0139, .0144, .0145, .0147, .0148, .0149, .0151, .0152, .0153, .0156, .0157, .0158, .0161, .0162, .0164, .0165, .0166, .0168, .0173, .0174, .0175, .0176, .0177, .0178, .0181, .0182, .0183, .0184, .0185, .0186, .0187, and .0191 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Margaret Currin, Wayne R. Boyles III, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

**Coastal Resources Commission**

Upon the call of the chair, 15A NCAC 07H .1101, .1102, .1103, .1104, .1105, .1801, .1802, .1803, .1804, and .1805 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Wayne R. Boyles III, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

**LOG OF FILINGS (PERMANENT RULES)****DHHS - Division of Health Benefits**

Upon the call of the Chair, 10A NCAC 21A .0304 was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Wayne R. Boyles III, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

**Criminal Justice Education and Training Standards Commission**

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Wayne R. Boyles III, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

**Sheriffs' Education and Training Standards Commission**

Upon the call of the Chair, 12 NCAC 10B .0405 was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Wayne R. Boyles III, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

**Department of Labor**

Prior to the review of the rules from the Department of Labor, Commissioner Jackson recused herself and did not participate in any discussion or vote concerning the rules because of a conflict.

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Wayne R. Boyles III, Margaret Currin, Jeff Hyde, Randy Overton, Paul Powell, and Bob Rucho – 8. Voting in the negative: None.

**Environmental Management Commission**

Upon the call of the Chair, the period of review was extended as requested by the agency to address technical changes by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Wayne R. Boyles III, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

**Board of Barber Examiners**

Upon the call of the Chair, the rules were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Wayne R. Boyles III, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

**EXISTING RULES REVIEW**

**State Board of Education**

16 NCAC 06 - Upon the call of the Chair, the Commission approved the report as submitted by the agency, by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Andrew Atkins, Bobby Bryan, Wayne R. Boyles III, Margaret Currin, Jeff Hyde, Barbara Jackson, Randy Overton, Paul Powell, and Bob Rucho – 9. Voting in the negative: None.

**COMMISSION BUSINESS**

The Chair recognized outgoing Commission Counsel, Amber May for her service to the RRC.

The meeting adjourned at 9:14 a.m.

The next regularly scheduled meeting of the Commission is Thursday, April 21, 2022, at 9:00 a.m.

\_\_\_\_\_  
Alexander Burgos, Paralegal

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Minutes approved by the Rules Review Commission:  
Jeanette Doran, Chair

**36:20**

***NORTH CAROLINA REGISTER***

**APRIL 18, 2022**

1673

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**RULES REVIEW COMMISSION**

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**Rules Review Commission Meeting March 17, 2022**  
**Held Via WebEx**

<b>Name</b>	<b>Agency</b>
Dennis Seavers	Barber Examiners
Cassie Gavin	Sierra Club
Pearson Cost	UNC
Brandi Salmon	DEQ
Carla Rose	Labor
Paul Wojoski	DEQ
Brandon Walker	DPI
Shannon Jenkins	DEQ
Britne Becker	Labor
Anne Coan	Farm Bureau
Kim Harron	DHHS
D Hargrove	DEQ
Laura Rowe	Treasurer
Elizabeth Kountis	DEQ
Dakota Loveland	Southern Environmental Law
Christopher Ventaloro	DEQ
David Rittlinger	DOI
Charminique Williams	CJETS
Catherine Blum	MFC
Jason Walsh	DEQ
Jill Cramer	Labor
Christy Goebel	DEQ
Helen Landi	DOT
Sue Homewood	DEQ
Lou Martin	DPI
Jeff Manning	DEQ
Shazia Keller	DHHS
Hannah Jernigan	DOT

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**LIST OF APPROVED PERMANENT RULES**  
**March 17, 2022 Meeting**

**HHS - HEALTH BENEFITS, DIVISION OF**

Conducting Department Appeal Hearings by Telephone or Ele... 10A NCAC 21A .0304

**CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION**

Responsibilities of the School Director 12 NCAC 09B .0202

Criminal Justice Instructor Training 12 NCAC 09B .0209

Radar Instructor Training Course 12 NCAC 09B .0210

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**RULES REVIEW COMMISSION**

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<u>Time-Distance Instructor Training Course</u>	12 NCAC	09B	.0211
<u>Certification Training for Radar Operators</u>	12 NCAC	09B	.0212
<u>Certification Training for Radar/Time-Distance Operators</u>	12 NCAC	09B	.0213
<u>Certification Training for Time-Distance Operators</u>	12 NCAC	09B	.0214
<u>Specialized Firearms Instruction Training</u>	12 NCAC	09B	.0226
<u>Specialized Subject Control Arrest Techniques Instructor ...</u>	12 NCAC	09B	.0232
<u>Specialized Physical Fitness Instructor Training</u>	12 NCAC	09B	.0233
<u>LIDAR Instructor Training Course</u>	12 NCAC	09B	.0237
<u>Certification Training for LIDAR Operators</u>	12 NCAC	09B	.0238
<u>Certification Training for Radar/Lidar Operators</u>	12 NCAC	09B	.0242
<u>Certification Training for Radar/Time-Distance/LIDAR Oper...</u>	12 NCAC	09B	.0244
<u>Trainee Attendance</u>	12 NCAC	09B	.0404
<u>Specialized Explosives and Hazardous Materials Instructor...</u>	12 NCAC	09B	.0417
<u>Instructor Training</u>	12 NCAC	09G	.0414
<u>Corrections Specialized Instructor Training - Firearms</u>	12 NCAC	09G	.0415
<u>Corrections Specialized Instructor Training - Controls, R...</u>	12 NCAC	09G	.0416

**SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION**

<u>Report of Separation</u>	12 NCAC	10B	.0405
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**LABOR, DEPARTMENT OF**

<u>Definitions</u>	13 NCAC	13	.0101
<u>Incorporated - Standards</u>	13 NCAC	13	.0103
<u>Name: Address</u>	13 NCAC	13	.0201
<u>Inspector Qualification</u>	13 NCAC	13	.0202
<u>North Carolina Commission</u>	13 NCAC	13	.0203
<u>Owner-User Inspection Organization</u>	13 NCAC	13	.0205
<u>Inspection Reports</u>	13 NCAC	13	.0207
<u>Shop Inspections and National Board "R" Certifi...</u>	13 NCAC	13	.0210
<u>Certificate Inspections</u>	13 NCAC	13	.0211
<u>Certificate and Inspection Fees</u>	13 NCAC	13	.0213
<u>Extended Pressure Equipment Operating Certificates</u>	13 NCAC	13	.0214
<u>Inspections Revealing Deficiencies</u>	13 NCAC	13	.0303
<u>Design and Construction Standards</u>	13 NCAC	13	.0401
<u>North Carolina Stamping and Registration</u>	13 NCAC	13	.0402
<u>Pressure Relief Devices</u>	13 NCAC	13	.0405
<u>High Pressure or Temperature Limit Control</u>	13 NCAC	13	.0406
<u>Automatic Low-Water Fuel Cutoff Controls and Water-Feedin...</u>	13 NCAC	13	.0409
<u>Firing Mechanism Controls</u>	13 NCAC	13	.0420
<u>Exhibition Boilers</u>	13 NCAC	13	.0422
<u>Model Hobby Boilers</u>	13 NCAC	13	.0423
<u>Standards</u>	13 NCAC	13	.0701

**ENVIRONMENTAL MANAGEMENT COMMISSION**

<u>Groundwater Quality Standards</u>	15A NCAC	02L	.0202
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**MARINE FISHERIES COMMISSION**

<u>Ocean Fishing Piers</u>	15A NCAC	03I	.0108
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<u>Replacement Costs of Marine and Estuarine Resources - Fish</u>	15A NCAC	03I	.0115
<u>User Conflict Resolution</u>	15A NCAC	03I	.0122
<u>Gill Nets, Seines, Identification, Restrictions</u>	15A NCAC	03J	.0103
<u>Trawl Nets</u>	15A NCAC	03J	.0104
<u>Channel Nets</u>	15A NCAC	03J	.0106
<u>Fyke or Hoop Nets</u>	15A NCAC	03J	.0111
<u>Atlantic Ocean</u>	15A NCAC	03J	.0202
<u>New River</u>	15A NCAC	03J	.0208
<u>Fishing Gear</u>	15A NCAC	03J	.0401
<u>Fishing Gear Restrictions</u>	15A NCAC	03J	.0402
<u>Horseshoe Crabs</u>	15A NCAC	03L	.0207
<u>Repacking of Foreign Crab Meat Prohibited</u>	15A NCAC	03L	.0210
<u>American Lobster (Northern Lobster)</u>	15A NCAC	03L	.0301
<u>Spiny Lobster</u>	15A NCAC	03L	.0302
<u>Spanish and King Mackerel</u>	15A NCAC	03M	.0301
<u>Purse Gill Net Prohibited</u>	15A NCAC	03M	.0302
<u>Bluefish</u>	15A NCAC	03M	.0511
<u>Cobia</u>	15A NCAC	03M	.0516
<u>Shad</u>	15A NCAC	03M	.0519

**COASTAL RESOURCES COMMISSION**

<u>Purpose</u>	15A NCAC	07H	.1101
<u>Approval Procedures</u>	15A NCAC	07H	.1102
<u>Permit Fee</u>	15A NCAC	07H	.1103
<u>General Conditions</u>	15A NCAC	07H	.1104
<u>Specific Conditions</u>	15A NCAC	07H	.1105
<u>Purpose</u>	15A NCAC	07H	.1801
<u>Approval Procedures</u>	15A NCAC	07H	.1802
<u>Permit Fee</u>	15A NCAC	07H	.1803
<u>General Conditions</u>	15A NCAC	07H	.1804
<u>Specific Conditions</u>	15A NCAC	07H	.1805

**MARINE FISHERIES COMMISSION**

<u>Definitions</u>	15A NCAC	18A	.0134
<u>Applicability of Rules</u>	15A NCAC	18A	.0136
<u>General Requirements for Operation</u>	15A NCAC	18A	.0137
<u>Supervision</u>	15A NCAC	18A	.0138
<u>Facility Flooding</u>	15A NCAC	18A	.0139
<u>Insect Control</u>	15A NCAC	18A	.0144
<u>Rodent and Animal Control</u>	15A NCAC	18A	.0145
<u>Water Supply</u>	15A NCAC	18A	.0147
<u>Ice</u>	15A NCAC	18A	.0148
<u>Plumbing</u>	15A NCAC	18A	.0149
<u>Toilets</u>	15A NCAC	18A	.0151
<u>Solid Waste</u>	15A NCAC	18A	.0152
<u>Person Hygiene</u>	15A NCAC	18A	.0153
<u>Equipment and Utensil Construction</u>	15A NCAC	18A	.0156
<u>Facility and Equipment Sanitation</u>	15A NCAC	18A	.0157

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**RULES REVIEW COMMISSION**

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<u>Equipment Storage</u>	15A NCAC	18A	.0158
<u>Crustacea Cooking</u>	15A NCAC	18A	.0161
<u>Cooked Crustacea Air-Cool</u>	15A NCAC	18A	.0162
<u>Cooked Crustacea Picking</u>	15A NCAC	18A	.0164
<u>Packing</u>	15A NCAC	18A	.0165
<u>Picked Crustacea Meat</u>	15A NCAC	18A	.0166
<u>Single-Service Containers</u>	15A NCAC	18A	.0168
<u>Repacking</u>	15A NCAC	18A	.0173
<u>Pasteurization Process</u>	15A NCAC	18A	.0174
<u>Preparation of Crustacea Meat for Pasteurization</u>	15A NCAC	18A	.0175
<u>Pasteurization of Crustacea Meat</u>	15A NCAC	18A	.0176
<u>Labeling of Pasteurized Crustacea Meat</u>	15A NCAC	18A	.0177
<u>Interfacility Pasteurization</u>	15A NCAC	18A	.0178
<u>Embargo or Disposal of Cooked Crustacea or Crustacea Meat</u>	15A NCAC	18A	.0181
<u>Bacteriological and Contamination Standards</u>	15A NCAC	18A	.0182
<u>Alternative Labeling</u>	15A NCAC	18A	.0183
<u>Thermal Processing</u>	15A NCAC	18A	.0184
<u>Thermal Processing of Crustacea and Crustacea Meat</u>	15A NCAC	18A	.0185
<u>Labeling of Thermally Processed Crustacea and Crustacea Meat</u>	15A NCAC	18A	.0186
<u>Interfacility Thermal Processing Procedures</u>	15A NCAC	18A	.0187
<u>Monitoring Records</u>	15A NCAC	18A	.0191

**BARBER EXAMINERS, BOARD OF**

<u>Physical Structure</u>	21 NCAC	06F	.0101
<u>Equipment</u>	21 NCAC	06L	.0103
<u>Sanitary Ratings and Posting of Ratings</u>	21 NCAC	06L	.0118
<u>Fees, Access to Forms, and Renewals</u>	21 NCAC	06N	.0101